BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING

(115–16)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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CONTENTS

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May 12, 2017

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Water Resources and Environment
FROM:	Staff, Subcommittee on Water Resources and Environment
RE:	Hearing on "Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning"

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Thursday, May 18, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building, to receive testimony related to "Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning." Witnesses will include city mayors, a county commissioner, a state water quality program director, a public works representative, and a representative of an environmental advocacy organization. Testimony will focus on the status of EPA's implementation of the integrated planning policy, and look at ways to help EPA, states, and municipalities in developing and implementing integrated plans that provide flexibility for municipal projects necessary to meet CWA regulatory obligations.

BACKGROUND

The U.S. Environmental Protection Agency (EPA) administers water quality and wastewater infrastructure programs pursuant to the Clean Water Act (CWA). Title III of the CWA establishes the technological and water quality-based treatment requirements for point source dischargers, including municipalities' wastewater treatment works. Title IV of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program for the discharge of pollutants from wastewater treatment works and certain municipal storm sewer systems. Title VI of the Clean Water Act provides for the establishment and capitalization of Clean Water State Revolving Loan Funds (SRFs) to aid in funding the construction of wastewater treatment works and other wastewater infrastructure around our Nation.

Public wastewater and clean drinking water services are necessary to sustain public health, support our economy, and protect the environment. Significant amounts of public resources have been devoted to improving water infrastructure in American communities over

the last 45 years. An impressive inventory of physical assets has been developed over this period.

Our Nation's wastewater infrastructure includes 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers, and 200,000 miles of storm sewers. Since 1972, with the enactment of the CWA, federal, state, and local investment in our national wastewater infrastructure has been over $250 billion. This investment has provided significant environmental, public health, and economic benefits to the Nation. Our farmers, fishermen, manufacturers, and tourism industries rely on clean water to carry out activities that contribute well over $300 billion to our economy each year.

However, our Nation's ability to provide clean water is being challenged, as our existing national wastewater infrastructure is aging, deteriorating, and in need of repair, replacement, and upgrading. Old and deteriorated infrastructure often leak, have blockages, and fail to adequately treat pollutants in wastewater, thereby creating water pollution problems.

The needs of municipalities to address wastewater infrastructure are substantial. EPA, in its most recent analysis of capital investments necessary to meet the Nation's wastewater and stormwater infrastructure needs, documented needs of $271 billion (as of January 1, 2012).[1] This includes capital needs for publicly owned wastewater pipes and treatment facilities ($198 billion), combined sewer overflow (CSO) correction ($48 billion), stormwater management ($19 billion), and recycled water treatment and distribution ($6 billion).[2] Studies by the Congressional Budget Office and the Water Infrastructure Network have identified even higher numbers.

The needs are especially urgent for many areas trying to remedy CSOs and sanitary sewer overflows (SSOs), often associated with systems with insufficient capacity to address wet weather conditions, and for municipalities lacking sufficient independent financing ability to repair or replace their wastewater infrastructure. In recent years, EPA has established the reduction of CSOs and SSOs and the reduction of pollution and volume of stormwater as a national enforcement priority, which has resulted in focused enforcement attention on those municipalities with these ongoing challenges. The EPA establishes standards for stormwater and wastewater pollution.

If cities and municipalities have not reduced CSOs and SSO's, then the EPA has been taking enforcement actions, which have resulted in many larger cities and smaller municipalities entering into enforcement settlements. In such cases, cities and municipalities sign consent agreements with the U.S. government to implement enforceable plans to address their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

There are also additional federal obligations on municipalities to address other ongoing water quality challenges that are placing a further demand for resources on municipalities. For example, while our Nation's wastewater utilities already have removed the vast majority of

[1] EPA, *Clean Watersheds Needs Survey 2012 Report to Congress*, EPA-830-R-15005 (Jan. 2016).
[2] *Id.*

conventional pollutants from municipal wastewater and stormwater, looking forward, they face significantly higher costs to remove the next increment of pollutants (such as nutrients) from wastewater and stormwater, as required under the CWA.

A large portion of these regulatory obligations is going unfunded by the federal and state governments. In the absence of increased federal and state financial resources, the cost of many of these obligations ultimately rests with local governments and ratepayers. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, bonds, and user fees.

Need for Greater Regulatory Flexibility and Prioritization

Municipalities are very concerned about the impacts of a lack of available financial resources on the ability of local governments to meet their compliance obligations. Organizations representing local governments, including cities and counties, note that "[l]ocal governments are at a crossroads," and that "Cities and counties spend over $115 billion per year to provide safe and reliable water and sewer services and maintain a vast physical infrastructure of pipes, pumps, and plants."[3] They note that "local governments, our residents, and businesses must spend additional resources to comply with numerous environment and non-environmental federal and state unfunded mandates, which further limits the money available for water infrastructure."[4]

Given municipalities' dwindling revenues due to competing municipal demands for resources, municipalities have urged EPA officials to provide the communities with increased flexibility and provide prioritization of the various regulatory requirements of the CWA, called integrated planning. Municipalities argue that, through integrating compliance with stormwater and wastewater requirements, they would be able to identify the most cost-effective and protective approaches to meet the requirements, and prioritize their investments in addressing such requirements.

Under such approach, EPA would evaluate a municipality's financial capabilities to address pending requirements, and in light of those capabilities, allow a municipality to identify how it would prioritize investments in wastewater and stormwater management based on the greatest public and environmental health benefit and in recognition of the municipality's ability to pay. This approach would give municipalities the flexibility to establish CSO, SSO, and other pollution control strategies that best reflect local circumstances and that enable them to implement innovative or sustainable technologies, approaches, and practices to comply with such requirements, including using green infrastructure measures. Further, as noted by EPA in past testimony to the Subcommittee, the integrated planning process does not lower existing regulatory standards.[5] Municipalities are encouraging EPA to prioritize and support those activities that provide the highest environmental return per dollar spent.Municipalities are

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[3] Letter from the Executive Directors of the U.S. Conference of Mayors, National League of Cities, and National Association of Counties, to Congressmen Gibbs and Chabot, expressing support for integrated planning and H.R. 465 (Mar. 22, 2017).

[4] *Id.*

[5] Testimony of Acting Assistant Adminstrator Nancy K. Stoner, before the Subcommittee on Water Resources and Environment, July 25, 2012

seeking a more collaborative approach where EPA and state water regulators work with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues.

EPA's Integrated Planning and Permitting Policy

In January 2012, EPA formally released a proposed framework, entitled *Draft Integrated Planning Approach Framework*, to provide EPA, states, and local governments with guidance to develop and implement effective integrated planning approaches to municipal wastewater and stormwater management. The proposed framework identified EPA's vision of operating principles and essential elements of an integrated municipal wastewater and stormwater management plan.

Stakeholders urged EPA to proactively collaborate with municipalities across the Nation, as pilot demonstration communities, to develop integrated plans as a model that will show how EPA, state regulatory agencies, and local communities can all work together to implement flexible, practical, and affordable wet weather solutions in a more integrated, cost-effective, and flexible manner, and also that will pass muster with the regulators. Stakeholders also urged EPA to create a new national integrated wet weather compliance permit that supersedes all of a municipality's water quality related permits for a set period and that includes all applicable regulatory requirements under the CWA. Further, stakeholders urged EPA to take into account a municipality's ability to pay for improvements when determining the municipality's monetary investment in an integrated wet weather improvement plan and permit.

In June 2012, EPA released its integrated planning framework, entitled *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*.[6] The document outlines principles for letting municipalities structure plans for addressing multiple CWA obligations one at a time in an effort to reduce costs. EPA's framework is intended to provide EPA regional offices and states with a guide on how to help cities prioritize wastewater and stormwater infrastructure improvements that are needed to address water quality issues, including reducing CSOs, SSOs, and other pollution releases during heavy precipitation events.

The final policy was initially received by some stakeholders with cautious optimism and hope that the framework will be a step forward in dealing with mounting financial obligations facing cities under the CWA. Many noted that how EPA implements the policy will be critical to evaluating its success.The document indicated that the EPA would rely on both permits and enforcement actions to implement the new integrated approach. However, EPA said plans developed using the framework cannot be the basis for delaying either permits or enforcement actions.

Some municipal groups have criticized the policy because they believe it includes inconclusive language saying that a financial capability plan should be developed and included as a reference point in the integrated plan. Such an assessment should take into consideration current sewer rates, stormwater fees, and other revenue, planned rate or fee increases, and the

[6] The final framework document is dated May 2012, and the framework's cover memo is dated June 5, 2012.

costs, schedules, anticipated financial impacts to the community of other planned stormwater or wastewater expenditures, and other relevant factors impacting the utility's rate base.

There have been extensive discussions between EPA and stakeholders concerning the affordability framework for CWA compliance. Stakeholders are pushing for financial considerations beyond the median household income of a community, which EPA uses as an indicator of assessing the financial impact of compliance on a community. The affordability framework that has been discussed is intended to support EPA's integrated planning framework and other considerations of regulatory affordability.

Municipalities also have been urging EPA to consider the cost of a municipality's drinking water obligations when assessing the community's ability to pay for CWA compliance. EPA has said that the financial burden associated with projects not required by the CWA may be considered when evaluating the overall financial health of a community. Costs for drinking water treatment and distribution, however, would not be used to estimate metrics such as the household income indicator identified in EPA's financial capability assessment guidance.

Many stakeholders are pleased that the final policy includes language endorsing the use of adaptive management practices which help to ease communities' ability to comply with permit and enforcement requirements. Many believe the inclusion of adaptive management language is encouraging, because it means that there is some acknowledgment by EPA that circumstances surrounding a project do sometimes change.

Implementation of the Policy

Municipalities have welcomed the opportunity for flexibility under the integrated planning policy. However, they have sought clarification on a number of issues, such as how municipalities can proactively ensure that the plan they develop will be acceptable to regulators; who determines a community's most pressing water quality needs; and whether a municipality can include ongoing needs for infrastructure rehabilitation under an integrated planning approach. Some stakeholders believe that clarification is needed regarding state and EPA roles. EPA's position is that it is the responsibility of cities to work and coordinate with state permitting agencies to develop integrated plans. However, some states are uncertain what EPA's oversight role would be if EPA disagrees with a plan that a state and municipality have developed.

Examples of integrated plans are needed. In October 2014, EPA announced the availability of federal funding, totaling $335,000, to five municipalities for technical assistance in developing municipal integrated plans. (Funding was awarded to Burlington, VT; Durham, NH; Onondaga County, NY; Santa Maria, CA; and Springfield, MO.) The five municipalities were selected from 28 communities that had expressed interest in technical assistance from EPA. The development of plans for these five municipalities remains pending.

With the planning policy in place, some municipalities have worked on developing plans pursuant to the policy. EPA officials have had discussions with some municipalities about writing and implementing integrated plans to manage stormwater and wastewater. However, five

years after EPA announced the policy, some stakeholders are concerned that integrated plans are being incorporated only into new or amended consent decrees, and not in CWA permits.

WITNESS LIST

The Honorable Pete Buttigieg
Mayor
City of South Bend, Indiana
On behalf of The U.S. Conference of Mayors

The Honorable Johnny L. DuPree, Ph.D.
Mayor
City of Hattiesburg, Mississippi
On behalf of the National League of Cities

The Honorable Todd Portune
Commissioner,
Hamilton County, Ohio
On behalf of the National Association of Counties

Mr. Craig Butler
Director
Ohio Environmental Protection Agency
On behalf of the Environmental Council of the States

Mr. William E. Spearman, III, P.E.
Principal
WE3 Consultants, LLC
On behalf of the American Public Works Association

Mr. Lawrence Levine
Senior Attorney
Natural Resources Defense Council

BUILDING A 21ST-CENTURY INFRASTRUCTURE FOR AMERICA: IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING

THURSDAY, MAY 18, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2167 Rayburn House Office Building, Hon. Garret Graves (Chairman of the subcommittee) presiding.

Mr. GRAVES OF LOUISIANA. The subcommittee will come to order. Good morning, and thank you all for being here. I ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee today and ask questions at the hearing. Without objection, it is so ordered.

I want to welcome everyone for being here today at our hearing "Building a 21st-Century Infrastructure for America: Improving Water Quality Through Integrated Planning." Communities all across our Nation are facing increasing regulatory enforcement, financial pressures to address sewer overflows and other aging water infrastructure issues, as well as other burdensome regulatory challenges that have become priorities in recent years.

These include more stringent and widespread regulations on stormwater discharges, daily loads, total maximum daily loads, nutrients and other pollutants, and public drinking water systems which could lead to many communities having to install and operate, at great expense, advanced treatment, removal, and prevention technologies.

A large portion of these regulatory mandates are going unfunded by the Federal and State governments, with the result that many municipalities have had to make substantial increases in investments in wastewater and public infrastructure, to the point that many communities and ratepayers are now increasingly getting economically pressed to the limit.

And I want to give some examples of what that looks like. In my home State of Louisiana, we have situations where the city of Baton Rouge, where I am from, we are under a consent decree. The city of New Orleans, under consent decree. The city of Shreveport, under a consent decree.

The St. Louis region has a $4.6 billion consent decree, Atlanta $4.1 billion, Indianapolis $3.1 billion, South Bend $861 million, and that city has a population of approximately 100,000. So you can do the math there. Lima, Ohio, a population of 38,000, has a consent decree costing approximately $160 million.

In Chicopee, Massachusetts, they had to raise rates by 134 percent. The residents now pay more than $700 a year. Baltimore had to raise rates by approximately 9 percent per year for each of the last 8 years, with the exception of 1 year where there was approximately a 4-percent increase. And in Washington, DC, the average household, for four to six people, is charged just under $100 a month.

No one is sitting here saying that we should not have regulations. No one is saying that we should not respect our environment, that we should be discharging polluted water. What we are saying is that the EPA in 2012 developed an integrated planning approach where the idea was you were going to have more flexibility in the way that these issues were addressed, more flexibility for the municipalities, for the States, and others, to solve these problems, and of course, do it in a manner that is affordable rather than continuing to impose unfunded mandates, continuing to see extraordinary increases on rates of our citizens across the country.

And so the hearing today, we are interested in hearing from our witnesses and learning more about your perspective on integrated planning, how that is working as compared to what appears to be a larger focus on aggressive enforcement actions such as consent decrees, and getting your perspective on how this process can be improved to where we can do a better job balancing environmental success, affordability, and flexibility for many of our States and municipalities that are dealing with these challenges.

So I am looking forward to hearing from our witnesses today. I am looking forward to hearing your thoughts on how we move forward and address some of these challenges. And with that, I am going to turn to Ms. Esty for opening comments.

Ms. ESTY. Thank you, Mr. Chairman, for holding this important hearing on improving water quality through integrated planning. In 1972, Congress enacted the Clean Water Act to protect public health, to ensure safe sources of drinking water, and to provide safe recreation areas for all Americans.

Forty-five years later, water quality continues to be a challenge across the country and in my home State of Connecticut. Poor water quality does not just threaten public health, it jeopardizes our fisheries, limits recreational opportunities, and is a drag on our economy.

Mr. Chairman, I ask unanimous consent to enter into the record a summary of recent Clean Water Act reports on the condition of the Nation's waterways that shows a downward trend in improving the health of streams, rivers, and lakes across the country.

Mr. GRAVES OF LOUISIANA. Without objection.

Ms. ESTY. Thank you.

[The national summary of impaired or threatened assessed waters follows:]

National Summary of State Information
Percentage of Impaired or Threatened Assessed Waters

	Rivers and Streams (Miles)	Lakes, Reservoirs, and Ponds (Acres)	Bays and Estuaries (Sq. Miles)	Coastal Shorelines (Miles)	Wetlands (Acres)
2017 [1]	55.1	71.5	83.5	21.3	53.9
2011 [2]	51	66	61	38	36
2009 [3]	47	64	30	n/a	n/a
2007 [4]	49	52	44	17	52
2002 [5]	39	45	51	14	n/a
2000 [6]	35	45	44	12	n/a
1996 [7]	44	49	42	21	n/a

[1] U.S. Environmental Protection Agency, National Summary of State Information (ATTAINS Database) (May 2017).
[2] U.S. Environmental Protection Agency, National Summary of State Information (ATTAINS Database) (January 2011).
[3] U.S. Environmental Protection Agency, National Water Quality Inventory, 2004 Reporting Cycle (January 2009).
[4] U.S. Environmental Protection Agency, National Water Quality Inventory, 2002 Reporting Cycle (October 2007).
[5] U.S. Environmental Protection Agency, National Water Quality Inventory, 2000 Report (August 2002).
[6] U.S. Environmental Protection Agency, National Water Quality Inventory, 1998 Report to Congress (June 2000).
[7] U.S. Environmental Protection Agency, National Water Quality Inventory, 1996 Report to Congress (April 1998).

Ms. ESTY. Improving our Nation's water quality should continue to be a priority for Congress, and I look forward to working together to help our communities make continued progress in restoring their local rivers, lakes, and streams for the protection and enjoyment of all Americans.

But our communities cannot afford to improve the water quality on their own, and that is in part why EPA developed the integrated planning policy under the Clean Water Act, based on the reality that States and municipalities do not have the financial or, often, the technical expertise to address local water quality challenges.

The integrated planning policy encourages communities to work directly with the Federal Government and State agencies to identify and fully implement the most effective and the most cost-effective approaches for meeting our shared objective of clean water that protects public health and the environment.

Our communities need additional financial resources and assistance to clean up their local rivers, streams, and lakes. But the primary program for providing that assistance, the Clean Water State Revolving Fund, was last authorized in 1987, almost 30 years ago.

Reauthorizing and funding the Clean Water State Revolving Fund is particularly important for many of our States, and I can speak from experience in Connecticut, where all of our rivers basically flow into Long Island Sound. It is absolutely essential, and I know when I served on the local town council and was tasked to the Water Pollution Control Authority, basically every municipality in Connecticut relies on the State Revolving Fund to fund what typically for a community of 30,000, like mine of Cheshire, was $6 million just to deal with the phosphorus issue.

So we know that that is often not reasonable for communities to deal with on their own, and yet the health of Long Island Sound is an American issue. It touches the entire country and involves economically important fisheries and other recreational activities. So that just underscores how important these initiatives are.

And I am looking forward to hearing today, with your expertise and your advice to us, to make sure we have the support to reauthorize and fully fund the Clean Water State Revolving Fund to allow you at the local and at the State level to make these important investments.

And I know, having been in the State legislature and having been in local office and worked on these exact issues, and having worked for NRDC [Natural Resources Defense Council] on water issues back in law school, that these are ongoing challenges. We want the most effective use of tax dollars. We all want that.

But the response should not be, let's just let the water quality go. As we saw in Flint, Michigan, that is a danger. That is a danger, and we should not be subjecting our constituents or anyone in America to those risks.

So again, this is an important discussion we are having here today, and we are very much looking forward to your perspective on how this integrated planning process fits into that broader initiative of doing it smarter, doing it better, and stretching those taxpayer dollars to achieve the goals.

I think we need to keep hard adherence to the goals of clean, safe, and affordable drinking water for communities and waste systems that work, and then have the political will to fund them at appropriate levels to help communities across the country preserve these national treasures.

And a final anecdote: My husband grew up right next to Waterbury, Connecticut. When he was a kid, he knew what color Keds they were making in Waterbury in Sperry by the color that the river was flowing. And he could smell it when he was playing baseball.

The Waterbury Water Treatment Plant Initiative, which has been done through the clean water fund, is now restoring that entire river system to the cleanest level it has been since the early 1800s. It is possible to reclaim these rivers and have the fly fishing I now have in my district precisely because these funds have been so important.

So again, I welcome you all to joining us here today on National Infrastructure Week, and look forward to your testimony. Thank you very much.

Mr. GRAVES OF LOUISIANA. Thank you, Ms. Esty.

And now I am going to turn to the ranking member of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thanks for this important hearing. We do not want overly prescriptive and burdensome regulations. We do want to give flexibility to communities, and we hope to hear about what a number of communities have done or what problems they have had with a results-oriented approach that is not following a Federal prescription. That is critical.

But the Federal Government is not being a good partner. We are not putting our money where our regulations or mouth is. Now, you can go one of two ways. You can say, well, let's just waive the regulations. Let's go back to the good old days when the Cuyahoga River caught fire and the Willamette River in Oregon was essentially an open sewer.

I do not believe the American people support that. The American people want clean rivers and streams and the recreational aspects of that. They want drinking water that is safe, and we can do that. It would be pathetic for the Government of the United States of America to say, "We cannot afford clean water. We are going to emulate China where the water is just filthy and undrinkable."

So today I am introducing, with Ranking Member Napolitano, who because of a personal issue is not here, and Representative Duncan, we are introducing a bill to reauthorize the Clean Water SRF program. The Federal Government needs to be a good partner. Statistics, and I will put this little chart in the record, are alarming.

The deterioration is accelerating; just 20 years ago, 44 percent of rivers and streams, in terms of mileage measured, were impaired, and today, it is 55.1. Lakes, reservoirs, and ponds have gone from 49 to 71.5 percent. Bays and estuaries particularly alarming since that is basically the breadbasket of the oceans—the estuaries have gone from 42 percent impaired to 83.5 percent impaired. Coastal shoreline miles, we are doing a little better there; it is only up slightly. And then wetlands, we are talking about 54 percent.

So hopefully we will hear from the witnesses today perhaps Congress needs to move the EPA toward a more results-oriented approach with more flexibility. I had a city in my district that developed a very, very innovative way to deal with wastewater, and I am sure others around the country have done that.

So I am looking forward to the testimony, and hopefully we will take action and reauthorize the Clean Water SRF program. Thank you, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. DeFazio.

Before I begin introducing our witnesses this morning, I need to dispense with some unanimous consent requests.

I ask unanimous consent that written testimony submitted on behalf of the following be included in the hearing record: from the Environmental Protection Agency, from the National Association of Clean Water Agencies.

Is there any objection?

[No response.]

Mr. GRAVES OF LOUISIANA. Without objection, so ordered.

[The written testimonies from the Environmental Protection Agency and the National Association of Clean Water Agencies are on pp. 123–137.]

Mr. GRAVES OF LOUISIANA. I ask unanimous consent that the record remain open for 30 days after the hearing in order to accept written testimony for the hearing record. Without objection, it is so ordered.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses provide answers to any questions that may be submitted to them in writing. Without objection.

Ms. ESTY. I ask unanimous consent that the following statements and letters be made part of the hearing record for today: first, a statement from Representative Marcia L. Fudge of Ohio; the second letter is from several conservation organizations, including American Rivers, the American Sustainable Business Council,

Earthjustice, the League of Conservation Voters, NRDC, and the Southern Environmental Law Center.

Mr. GRAVES OF LOUISIANA. Without objection, so ordered.

[The statements of Hon. Marcia L. Fudge and American Rivers et al. are on pp. 138–143.]

Mr. GRAVES OF LOUISIANA. Thank you. At this time I will recognize Mr. Rokita to introduce the Honorable Pete Buttigieg.

Mr. ROKITA. Thank you.

Mr. GRAVES OF LOUISIANA. Is that all right? All right. Thank you.

Mr. ROKITA. We will get to that, Chairman.

[Laughter.]

Mr. GRAVES OF LOUISIANA. Pete.

Mr. ROKITA. Thank you, Chairman, and thank you for your leadership in organizing us here this morning. I am happy to take this opportunity to welcome before our subcommittee a fellow Hoosier, our executive brand leader in South Bend, Indiana, Mayor Pete Buttigieg, just like it is spelled.

[Laughter.]

Mr. ROKITA. Mayor Buttigieg was first elected mayor in 2011 as a young man and is currently serving in his second term. Mayor Buttigieg is testifying before the committee, Chairman, representing the Conference of Mayors.

South Bend is the fourth largest city in Indiana, with a population of just over 100,000 people. It is also home, of course, to one of the most prestigious universities in the world, the University of Notre Dame. But perhaps more importantly, it comes also very close to rivaling Whiting, Indiana as the best place in the Midwest to get a good pierogi.

As the mayor will explain, South Bend also has a unique history, perhaps unfortunately, with Clean Water Act. South Bend is currently under a consent decree, which is in essence a mandate placed upon them by the Federal Government but without any funding from the Federal Government. These burdens placed on our local governments need to stop, and I look forward to hearing from Mayor Buttigieg and all our witnesses on this matter. I yield back.

Mr. GRAVES OF LOUISIANA. Reserving the right to object to the description of Notre Dame, I recognize Mayor Pete for 5 minutes.

TESTIMONY OF HON. PETE BUTTIGIEG, MAYOR, CITY OF SOUTH BEND, INDIANA, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; HON. JOHNNY I. DUPREE, PH.D., MAYOR, CITY OF HATTIESBURG, MISSISSIPPI, ON BEHALF OF THE NATIONAL LEAGUE OF CITIES; HON. TODD PORTUNE, COMMISSIONER, HAMILTON COUNTY BOARD OF COMMISSIONERS, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES; CRAIG BUTLER, DIRECTOR, OHIO ENVIRONMENTAL PROTECTION AGENCY, ON BEHALF OF THE ENVIRONMENTAL COUNCIL OF THE STATES; WILLIAM E. SPEARMAN III, P.E., PRINCIPAL, WE3 CONSULTANTS, LLC, ON BEHALF OF THE AMERICAN PUBLIC WORKS ASSOCIATION; AND LAWRENCE LEVINE, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Mr. BUTTIGIEG. Thank you, Chairman, and thank you, Congressman Rokita, for the gracious introduction. I would welcome you for a comparative pierogi tasting and we can settle that question about Whiting. And I want to thank everyone here for paying attention to an unglamorous but extraordinarily important issue for us.

As was said, South Bend is a medium-sized city. We've got about 100,000 people, and as a mayor, I am proud to report we are seeing our fastest population and economic growth in a generation. But we are still struggling economically in many ways. Over one-quarter of our population lives below the Federal poverty line.

And, like many midwestern communities, we have a legacy combined sewer system. So since late 2011, we have been working to comply with the Federal consent decree that tells us how we are supposed to modify our sewer system to reduce overflows.

We love our river and we enthusiastically support the goal of reducing overflows. But the current plan is enormously expensive, $861 million, as the chairman mentioned. When you add in financing costs, that is over $1 billion. So in a city of 100,000, that is $10,000 for every man, woman, and child, in a city where the per capita personal income is $19,818. It is simply not affordable.

One out of every ten households in our city would spend 14 percent of their income as a household on the wastewater portion of their bill. Low-income families cannot afford it, and we also cannot afford to have our economic competitiveness diminished by wastewater rates that make us uncompetitive. And I cannot believe that this set of harms was ever intended in the Clean Water Act.

I do want to tell you about the progress that we have already made. This is a two-phase plan. We have already executed phase 1. We invested $150 million to do that. I am also sometimes heard boasting that South Bend has the smartest sewers in the world. Beginning at the initiative of my predecessor, our city established a network of WiFi-enabled small sensors deployed throughout the system that allows us to optimize the flow.

Because of those two things, we have already reduced our overflows by 75 percent. We have gone from over 2 billion gallons annually to less than 500 million. But getting that last 25 percent, that part has a price tag of over $700 million. It is all "gray" infrastructure, tanks and tunnels. So it is not what you would call an integrated plan, and it does not contemplate green infrastructure.

Now, thanks to that smart sewer data that I just mentioned, we have been able to model with much greater accuracy the plan that we agreed to. And what we have learned is that it is not only more expensive but actually less effective than originally envisioned. And yet as of now, we are required to go forward with it.

We have figured out a way to meet the objectives for dramatically less, from $713 million to about $200 million, through a smarter, greener plan, but only if we are allowed to implement it. So what communities like South Bend need most of all is flexibility. Rigid long-term control plans that do not evolve with technology and do not use an integrated approach are not meeting the goal of protecting our national waters efficiently and affordably.

Now, a lot of cities share South Bend's story, and that is why the U.S. Conference of Mayors is calling for solutions in a number of areas:

First, it is time to codify the EPA's integrated planning and permitting policy. Integrated planning is designed to allow cities to develop comprehensive plans for our water, sewer, and stormwater needs, and invest over time according to our priorities.

Second, we believe we can achieve long-term control through permits, allowing for more flexibility and realistic timelines rather than committing to highly prescriptive plans that only allow gray infrastructure and do not keep up with the times.

Third, we are urging congressional support for exercising flexibility in the existing law. The Clean Water Act allows EPA to use flexibility in what are called use attainment designations, allowing for commonsense variances. But that flexibility is applied very unevenly across the system and across the country.

And fourth, the conference urges eliminating civil penalties for local governments working in good faith. We believe the civil penalties should be reserved only for those units that refuse to achieve progress, not for those doing our best to serve citizens affordably. Now, the conference favors bill 465, but all of the bills that are being discussed recently are positive steps forward, and we thank Members for paying attention to this. We think that the financial impact threshold triggering a discussion—not a rollback, but a discussion of flexibility—is urgently needed in cities like ours. And we believe overall we need to rethink how to clean up our lakes and rivers as effectively and cost-efficiently as possible.

Again, I thank the committee for your attention to this matter. I would refer you to our written testimony for more detail. And I look forward to this morning's discussion.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Mayor. Thank you.

Our next witness is the Honorable Johnny DuPree, the mayor of Hattiesburg, Mississippi. And with a name like DuPree, I assume you were kicked out of Louisiana at some point. But I welcome you being next door and recognize for 5 minutes.

Mr. DUPREE. Good morning, Mr. Chairman, Chairman Graves, and to Congresswoman Esty and members of the subcommittee. I am Johnny DuPree. I am mayor of the city of Hattiesburg, Mississippi, some say the home of Brett Favre because he is still there. We are the fourth largest city in the State. We have, per capita, more doctors in Hattiesburg than any other city in the State.

But I want to thank you for this opportunity to highlight the importance of investing in our Nation's water infrastructure. I would also like to discuss some opportunities of local government flexibility in dealing with the kinds of water challenges like we are facing in Hattiesburg.

First, on behalf of the National League of Cities, I would like to express our support for two much-needed policy frameworks adopted by EPA, the integrated municipal stormwater and wastewater planning approach and the Financial Capability Assessment Framework for municipal Clean Water Act requirements. They have been important tools for us for local government dealing with stormwater and wastewater infrastructure issues.

But while those tools have been a great help to our cities, there is still a lot more that we could do. We have to ensure that these frameworks can work not only for the largest cities and the smallest cities but for all cities, all communities, to help balance the environmental protection with economic feasibility.

In working to serve our constituents, my other fellow city leaders and I are faced with regulatory burdens and unfunded mandates. We have had to make tough choices sometimes about service or maintenance. We have seen proposed budget cuts that would undermine our most important programs.

In Hattiesburg, we are facing challenges addressing sanitary sewer overflows, just like other cities, upgrading our wastewater treatment facility to the tune of maybe $150 million, and modernizing our drinking and water system. Like in many cities, many of our pipes and mains are well past their expected life design. Our city is 133 years old.

Our city has invested over $40 million in bond funds over the last 5 years to meet the requirements of the Clean Water Act and the Safe Drinking Water Act. We are projecting to spend another $30 million in bonds over the next 5 years. And on top of that, we have hiked our rates over and over and over again, just this last year by 20 percent.

But all of that spending still will not be enough to meet our needs and to meet the requirements. It is still not enough to satisfy these unfunded Federal mandates. So let me be clear. We are committed to making the smartest, most sustainable investments for our community. And we care about building infrastructure, infrastructure that will not only take us further but also take our children and their children further.

But with limited financial capacity, both from our city and from our citizens, those who are least able to afford it, being able to prioritize and sequence projects would go a long way towards making a long-term plan for integrated stormwater and wastewater projects more feasible.

The first thing we need in our cities is flexibility, flexibility through partnerships. Last October, Hattiesburg won a technical assistance grant from EPA to develop green infrastructure along the Little Gordon's Creek, which is an impaired tributary of the Leaf River. That plan would help us extend the life of our infrastructure and help us save money.

Mr. Chairman, this is exactly what cities and towns need, the ability to work with our State and our EPA to prioritize our investments and embrace innovative solutions to integrated planning.

The second thing we need is flexibility to permit. If you give city leaders the chance to be realistic with time and prioritize, accordingly you get a better solution and oftentimes a lower rate. What cities and towns need most is affordable, flexible Federal programs that work in every community, large and small, urban or rural; that will be consistent in guidance, and assistance across the EPA regions. When we can count on that Federal support, we can start fixing the program.

Luckily, many of you and your fellow legislators are working proactively to support integrated planning on the local level, and I see committee sponsors of both the Water Quality Improvement Act and the Water Infrastructure Flexibility Act. And we urge Congress to pass them both.

As you consider these bills, there are a number of provisions that could make the processes clearer, more efficient, and even more affordable. I encourage you to consider both technical feasibility and economic affordability within integrated permits, as well as reassessing the threshold at which financial impacts on ratepayers become too burdensome.

I also want to thank Ranking Member DeFazio in his absence and also Congresswoman Esty and all the other Members for introducing the Water Quality Protection and Job Creation Act, which would go a long way towards addressing our aging infrastructure problems.

In closing, the Federal Government's water regulations cannot come as mandates. We need more direct funding for our cities and we need the ability to address our wastewater and stormwater requirements in a holistic, flexible, and affordable manner through integrated planning.

I want to thank you all again for allowing me to come, and I look forward to your questions.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Mayor. Appreciate your testimony.

Our next witness is the Honorable Todd Portune, who is a commissioner for Hamilton County, Ohio.

Mr. PORTUNE. Good morning, Chairman Graves, Representative Esty, and members of the subcommittee. It is an honor to be here today to testify before this subcommittee. My name is Todd Portune, and I serve as president of the Hamilton County Board of County Commissioners in Ohio. Today I am representing the National Association of Counties.

Hamilton County, Ohio, is considered primarily urban, with a population of almost 808,000 residents located in southwest Ohio. The county seat is in Cincinnati, which is the third largest city in Ohio.

The topic of this hearing is of great importance to counties across the United States that are dealing with increased responsibilities and unfunded mandates under the Clean Water Act as co-regulators and as regulated entities. This includes the rising expenses associated with Clean Water Act wastewater-related wet weather consent decrees, with tighter stormwater requirements, and the

limited capabilities of our counties and residents to absorb the cost of these additional outlays.

Today, as you continue to assess how integrated planning can be used to achieve Federal water quality goals, I would like to share with the committee three key points for consideration.

First, integrated planning can help counties address the growing list of Clean Water Act needs. Over the years, the number of Federal regulations and requirements facing counties have increased dramatically.

This growing number of regulations comes at a time when counties, regardless of their size, are experiencing significant fiscal constraints, and our capacity to fund compliance activities is often limited. In fact, over 40 States put significant restrictions on counties' ability to generate revenue or collect taxes.

Additionally, the Federal Government has increasingly been using litigation-driven consent decrees to drive tighter requirements for combined sewer overflows and sanitary sewer overflows, including those at wastewater treatment plants. In some cases, the cost of these consent decrees has ranged from hundreds of millions to billions of dollars per county.

In my county, we oversee the Metropolitan Sewer District of Greater Cincinnati. It serves almost 300,000 households. But since 2004, Hamilton County and the sewer district has been required to comply with a consent decree for a Federal water quality noncompliance issue on our wastewater sewage system.

As a result, the county and our taxpayers are required to invest over $3 billion at 2006 rates in additional projects and infrastructure upgrades. In the past 10 years alone, Hamilton County has spent over $1 billion, with over $2 billion still to go under our decree.

Close to one-third of Hamilton County lives below the Federal poverty level. They are the ones most hard-hit by these new requirements and under the consent decree and other associated costs.

Since we began, our sewer rates have increased approximately 350 percent, and over the next 20 years annual sewer rates will rise from $844 a year to $2,748 a year when we finally meet the terms of the consent decree, if the remainder of the duties must be met during that time period. Unfortunately, my county is not an isolated case, and stories like this are being retold across the United States.

Second, integrated planning offers a path for counties to meet the growing universe of Clean Water Act regulations in an environmentally sensitive, streamlined, and cost-effective manner. That is why EPA's integrated planning framework is so attractive to counties.

Recognizing that water affordability is a huge problem, EPA set in place a framework to allow EPA regions to work collaboratively with States and impacted local governments across the universe of water mandates.

Under the plan, counties can prioritize their local water quality and infrastructure goals across all Clean Water Act programs based on the most pressing issues within their community. Had this been available to us at the very beginning in lieu of a consent

decree, Hamilton County could have saved county residents a lot of money.

Unfortunately, to date the EPA regional offices have not used integrated planning to the extent that they could, which brings me to the final point: Congress and the administration have a perfect opportunity today to protect water quality in ways that are affordable to counties and their residents.

This opportunity has been created by a number of bills that have already been introduced, including those that have moved through committee in the Senate. We thank the sponsors of those bills for their work toward passing legislation to codify EPA's integrated planning framework.

In conclusion and on behalf of America's 3,069 counties, we thank you, the subcommittee, for the opportunity to testify today about providing us, America's counties, with the flexibility to work with the EPA as a true partner, saving county ratepayers nationally close to hundreds of billions of dollars in the process, while meeting Clean Water Act requirements.

I will be happy to answer any questions that the subcommittee may have, and I refer to the written testimony as well that we have submitted on behalf of NACo [National Association of Counties]. Thank you very much.

Mr. GRAVES OF LOUISIANA. Thank you, Commissioner Portune. Appreciate you being here. At this time I recognize Mr. Gibbs to introduce Mr. Craig Butler.

Mr. GIBBS. Thank you. Thank you, Chairman. It is my pleasure today to introduce Craig Butler, who was appointed by Governor Kasich in February of 2014 as the director of the Ohio Environmental Protection Agency. Previously he was the assistant policy director for energy, agriculture, and the environment in Governor Kasich's administration.

He also served as the chief of Ohio EPA's Central and Southeast District offices after graduating with honors from Mansfield University in Pennsylvania with a B.A. in geography and environmental science, and also a master's degree in environmental science from Ohio University.

He has been a public servant for more than 24 years and he is a pragmatic regulator and proponent of finding innovative ways of solving water quality issues. And it is refreshing to have a director in Ohio that understands the relationship between business, economic growth, and how that can enhance and improve and protect an environment.

And so it is my pleasure today to welcome my good friend, Director Butler, as he is here representing the Environmental Council of the States. I yield back.

Mr. BUTLER. Thank you, Chairman Graves, Representative Esty. Representative Gibbs, thank you for the introduction. Members of the subcommittee, good morning. I am Craig Butler. I am director of the Ohio Environmental Protection Agency, testifying today as the Water Committee chair and Executive Committee member of the Environmental Council of the States—ECOS—a national nonpartisan organization whose members are the leaders of State and territorial environmental protection agencies across the country. ECOS members include leaders of your States' environmental

agencies, including the Louisiana Department of Environmental Quality and the California Environmental Protection Agency.

Communities large and small across the country are working hard to provide a wide array of municipal services, including delivering clean water, safe drinking water, and managing cleaning municipal wastewater and stormwater as required by Federal, State, and local law and regulation. State regulatory agencies like mine are working with them to deliver the clean and healthy environment we all deserve and want every day.

As you know, wastewater management requirements under the Federal Clean Water Act traditionally are approached in silos, with communities directed or required to plan and expend resources on wastewater and stormwater obligations independently.

This segmented approach fails to allow communities to consider how to strategically assess and pace total compliance investment in making wastewater and stormwater investments, sometimes resulting in unrealistic commitments and compromising other community health and environmental investment needs.

Looking at the cost cumulatively allows communities to determine their best collective path forward, with integrated considerations of household economic health, community borrowing potential, and public health and environmental protection goals, especially as ordinary citizens today pay for 95 percent of water and sewer infrastructure development rehabilitation and operating cost.

In Ohio we have documented clean water needs that exceed $14.5 billion over the next 20 years, including some communities that have multibillion-dollar consent orders to correct combined sewer overflows. This is not only a big city problem, however.

We have communities ranging from medium to very small, and from urban to rural, that have financial obligations to fix staggering problems with failing wastewater infrastructure. And at the same time, these obligations are increasing. The portion of household income dedicated to water and sewer bills is outpacing inflation. These communities need the ability to prioritize and then address problems with flexibility. This also does not include drinking water infrastructure needs in Ohio that are exceeding $12 billion over that same time period.

Integrated planning is one such strategy. Integrated planning can lead to more sustainable and comprehensive solutions, such as green infrastructure, that improve water quality to provide benefits and enhance community vitality. It is really important to note that integrated planning is not about changing existing regulatory or permitting standards or avoiding necessary improvement. Rather, it is an option to help municipalities meet their clean water obligations while optimizing their infrastructure investments through sequencing of their work.

Embarking on an integrated planning process requires meaningful investment and time. Nothing can be more discouraging than uncertainty over whether a plan will be accepted by a regulator when it is appropriated for dialogue. Clarity in the Clean Water Act and certainty of support of the U.S. EPA would lessen this risk, and communities would want to invest time and resources in the process.

Integrated planning is supported by the 2012 EPA policy, it has supported the integrated planning pilot projects. Limiting uncertainty through legislation would give communities more needed support to explore these tools for smart investment.

In Ohio we use these tools in the Clean Water Act to minimize uncertainty to communities when we want to pursue integrated planning. We use a phased Clean Water Act permitting approach, which phases requirements on a typical 5-year renewal schedule for their NPDES [National Pollutant Discharge Elimination System] or discharge permits where permits can be modified at midcycle to respond to economic change and challenge. It also allows project priorities and the permitting process to encourage collaboration rather than conflict and enforcement.

Ohio has the lead on 72 of 89 combined sewer overflow communities; 95 percent of these have long control plans that use integrated planning. The other 17 communities have negotiated Federal consent orders.

To give you one example, the city of Springfield in Ohio has used a phased approach to plan and implement critical wastewater upgrades to a permit. It has avoided enforcement and litigation and compliance schedules were incorporated into the permit, where we jointly prioritized projects to achieve large amounts of CSO [combined sewer overflow] reductions in a very short period of time.

In essence, we believe State and Federal regulators should work together to create opportunities for communities to plan collaboratively. Communities are often best-suited to assess their needs and shape their own priorities, and integrated planning helps them do this. The integrated planning process promotes conversation with EPA and State regulators, and those early conversations can prevent litigation cost as a result.

ECOS appreciates Members of the House and Senate bringing the issue forward. We appreciate the work of fellow Ohioans on the issue. Senator Portman is a cosponsor on Senator Fischer's Senate 692, the Water Infrastructure Flexibility Act; and Ohio Representative Latta is cosponsoring the House version, H.R. 1971, introduced by Representative Smucker; and the third bill, H.R. 465, Water Quality Improvement Act of 2017, was introduced by Representative Gibbs.

In closing, I will say it is encouraging to see several Members of Congress looking at ways to use integrated planning to be more accessible. A specific and focused amendment to the Clean Water Act could add much-needed clarity to benefit communities.

Mr. Chairman, Ranking Member, and members of the committee, I thank you for the opportunity on behalf of ECOS today. I will be happy to answer any questions.

Mr. GRAVES OF LOUISIANA. Thank you.

Our next witness is William Spearman III from WE3 Consultants. Mr. Spearman.

Mr. SPEARMAN. Good morning and thank you, Chairman Graves and Representative Esty, for holding this important hearing and for inviting me to participate. My name is Bill Spearman and I am a water resources engineer from Saluda, South Carolina, which just happens to be located in Congressman Jeff Duncan's district.

I have over 40 years of experience in stormwater management and watershed management at the Federal, State, and local levels. I also currently serve as the director at large for environmental management for the American Public Works Association that I am representing today.

APWA is an organization of nearly 30,000 members that provide the public works infrastructure and services which are essential to our Nation's economy and the quality of life we all enjoy. APWA members in the local communities and utilities they serve understand that clean water is important for the economic, social, and environmental health of their communities.

However, these local communities also recognize that protecting water quality is only one of the issues competing for their limited resources. These other issues include: police and fire protection, streets and roads, parks and open spaces, and many other local concerns and needs.

APWA and its members recognize the need for flexibility in the planning and permitting process to address the differences in communities' water quality problems, goals, and financial capabilities. Integrated planning and permitting should provide this flexibility.

Until now, the use of integrated planning and permitting has predominately been driven by administrative orders or consent decrees. Permits, though, allow for flexibility, which may address the needs of individual communities as opposed to consent decrees, which may result in penalties and fines if a community is unable to meet the requirements in the consent decree in the specified time periods.

There are also substantial differences in NPDES permit requirements for wastewater treatment systems and municipal separate storm sewer systems. Most wastewater system permits are based on water quality-based effluent limits, whereas municipal separate storm sewer permits are based on the maximum extent practicable. Potential options could be the use of other processes currently in EPA guidance, such as the category 5R option.

The Financial Capability Assessment Framework issued by EPA in November 2014 recognizes the increasing financial burden on regulated communities for clean water activities. While previous financial capability assessments focus on combined sewer systems, the new guidance recognizes the cost of other programs, such as: sanitary sewer overflows, asset management or system rehabilitation programs, separate stormwater collection systems, and other Clean Water Act obligations that may be imposed by State or other regulators.

APWA supports the consideration of cost for all Clean Water Act obligations during the permitting and enforcement process, including the development of a definitive affordability model and even regional affordability indexes.

I would like to close my testimony today by sharing a current case study of an example of a successful integrated planning process for the Reedy River in Greenville County, South Carolina. Boyd Mill Pond, located on the Reedy River, was designated as impaired based on South Carolina's numeric nutrient criteria for Piedmont lakes.

With very limited data, the South Carolina Department of Health and Environmental Control released a proposed TMDL [total maximum daily load] for phosphorus for review by the three entities that were affected by the permit. These would be Greenville County, the city of Greenville, and ReWa, the local and regional water/sewer provider.

These three groups immediately challenged the waste load allocations in that TMDL. However, the three permittees recognized the importance of water quality to their citizens as well as the fact that these same citizens were going to bear the cost no matter which alternative was accepted.

The three permittees decided to pursue the category 5R option in lien of a TMDL and invest the money that they would have spent challenging the TMDL in developing an integrated planning process to achieve the desired water quality goals. Currently, several committees and outreach goals are working through the Reedy River water quality group. And I have included the website in my testimony, so I would encourage you and staff to look at that.

In closing, local governments and utilities need flexibility in meeting their water quality issues in a reasonable and financially prudent manner that recognizes that water quality issues are not the only issues that are competing for limited resources in our communities.

We encourage the committee to continue working on the integrated planning and permitting effort to ensure that scarce taxpayer funds are well-spent and our communities' water resources are protected. APWA and its members stand ready to be a resource to you and to assist you with this process. Thank you very much.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Spearman.

Our last witness is Lawrence Levine from the Natural Resources Defense Council. Mr. Levine.

Mr. LEVINE. Thank you. Good morning, Chairman Graves, Ms. Esty, and members of the subcommittee. I appreciate the opportunity to testify today.

First-class infrastructure to protect clean water and public health is among our most important and most basic needs as a Nation. America's municipal wastewater and stormwater infrastructure is outdated and failing due to decades of deferred maintenance and a failure to update pollution control technologies.

Far too often, untreated or insufficiently treated sewage and polluted runoff from cities and suburbs makes our rivers, bays, beaches, and other waters both unsafe for human use and too degraded to support the fisheries and natural habitat on which we all depend for sustenance, recreation, and natural flood mitigation. Likewise, our failure to invest adequately in drinking water infrastructure means that in too many cases, the public is still drinking water containing contaminants that pose serious health risks.

We have heard a lot this morning about the costs of Clean Water Act compliance. We cannot have a two-tiered system where the wealthy get water that is clean and safe for their families and the less well-to-do get second-class water, wastewater, and stormwater systems that pose risks to their health and environment. Rather, we need to create a system where all communities can afford to up-

grade their water infrastructure and ensure compliance with legal protections that make certain that they do.

In regard to integrated planning, there are two key points I would like to emphasize. First, integrated planning is a valuable tool for complying with Clean Water Act requirements. But it must not be used to water down those requirements.

When done properly, integrated planning encourages communities to look at all of the Clean Water Act requirements holistically and identify ways to sequence investments to attain the greatest health and environmental benefits in the least amount of time. This encourages the use of solutions like green infrastructure, which save both money and time by addressing more than one community need simultaneously.

Integrated planning must not be confused with approaches such as H.R. 465, the Water Quality Improvement Act, that would roll back Clean Water Act standards that protect public health and the environment.

Second, discussions of integrated planning must occur in the broader context of the need for increased water infrastructure investment at all levels of Government and the need to fund that investment in ways that assure affordable access for all to safe and sufficient water, wastewater, and stormwater services. Without addressing these two needs, integrated planning alone will not solve our water infrastructure crisis.

NRDC offers the following specific recommendations:

Integrated planning under EPA's 2012 framework should be used appropriately as an important tool for cost-effective and expeditious compliance with the Clean Water Act. Congress should not pass any legislation that uses integrated planning to roll back Clean Water Act protections.

Likewise, the concept of a community's financial capability must not be distorted to undermine public health and environmental protection. Permittees must take advantage of opportunities to improve affordability for ratepayers, and especially for low-income households, before cost concerns are considered as grounds for extending compliance schedules. Any consideration of cost must also consider the benefits of clean water and green infrastructure.

Congress should establish a low-income water and sewer assistance program and support the creation and expansion of complementary programs at the State and local levels.

NRDC supports H.R. 2328, which would create a pilot program. We further recommend that Congress create such a program nationwide.

Federal policy should promote local water, sewer, and stormwater rate structures that are fair and equitable to low-income households, as well as best practices that reduce costs for all customers such as asset management, green infrastructure, and water efficiency.

Congress should increase the cap on the amount of State Revolving Fund assistance that States can distribute as grants. A revised cap should provide incentives to States to invest more in water infrastructure and to direct more financial support to low-income communities' water infrastructure needs, to environmentally inno-

vative projects, and to projects that prepare our water systems for the impacts of climate change.

Finally, Congress should triple the current annual appropriations to the SRFs and direct the additional funds to priorities that are currently underfunded such as lead service line replacement, green infrastructure, water efficiency, and climate resilience.

Thank you for the opportunity to testify today. NRDC looks forward to working with the subcommittee on bold and effective solutions to our Nation's water infrastructure challenges.

Mr. GRAVES OF LOUISIANA. Thank you very much. I appreciate all of your testimony. I am going to first defer to the gentleman from Ohio, Mr. Gibbs, for the first round of questions.

Mr. GIBBS. Thank you, Mr. Chairman, and thank you for holding this hearing today.

I want to just go back for a minute. When the Clean Water Act was passed, I believe it was set up to be a partnership between the Federal Government and the States, where the States would implement and enforce the Clean Water Act under the guidance of the Federal Government.

And I want to get this out because I do not think the public understands maybe what is happening with these consent decrees. I read in your testimony and I am going to ask the question, but we have these consent decrees, and I think they are counterproductive because that money goes back and it penalizes the municipalities, or villages or whoever, that are trying to do the right thing, and they work many years and go through litigation and get these consent decrees set up and then they are tied into them.

And so when new technologies come about, they cannot address it without going back and revisiting the consent decree. There is a hesitancy to do that. And so I know the mayor from South Bend, Mr.—I will just call you the mayor from South Bend——

Mr. BUTTIGIEG. Pete is fine.

Mr. GIBBS [continuing]. And my director of the EPA in Ohio, Craig Butler, and my commissioner, mentioned some of the issues you have. Can you expound a little bit on what these consent decrees are doing? I know Craig Butler talked about your using an NPDES as permits, as a way, almost a de facto way, to do it permitting, I believe, or it sounds like.

And this consent decree issue is compounding the program at any cost and not getting the job done, and how the integrated planning concept can interact with that. So I will let one of you guys go—you want to go first, Mayor? Go ahead.

Mr. BUTTIGIEG. Sure. So first of all, we would welcome the opportunity to work more closely with the Indiana Department of Environmental Management, IDEM. They have been a great partner with us and we do think that State-level handshake would be something that, if they were more empowered, would benefit us.

The permit structure, we think, is a lot more flexible because, as you said, it does not lock us into something. Some of these long-term control plans, 20, 30 years, they just cannot possibly anticipate some of the technology changes that are going to happen.

We developed the capability through that smart sewer system I mentioned to actually use real-world data for the first time and run thousands of simulations to figure out what would actually happen.

And unsurprisingly, it revealed that there were some flaws in the original plan. The permit model would be much more flexible and would allow us to account for that.

Mr. GIBBS. Go ahead, Commissioner.

Mr. PORTUNE. Representative Gibbs, thank you so much for asking the question. As you correctly point out, when the Clean Water Act was originally adopted, it was a true partnership, including Federal money coming to help implement Federal policy.

Today, from the standpoint of counties, we find ourselves, with respect to Clean Water Act compliance, it being another unfunded mandate that is imposed on local communities along with all other obligations that we have to meet.

The flexibility that is allowable with integrated planning will help us to prioritize what would get the biggest bang for the buck in terms of improvements among a whole menu of Clean Water Act programs and obligations. It will allow us to introduce new innovative means like watershed management, adaptive practices, green infrastructure approaches, that are more cost-effective, efficient, and affordable for locals to be able to meet the obligations.

And the last thing I want to say is in deference to your time, my constituents want clean water. We are not approaching this as a means to backslide or anything like that with respect to the Clean Water Act. We want to comply with the obligations.

But counties, cities, local governments, that is where the rubber hits the road. We cannot delegate down. We are asking for help so that we can afford to meet our obligations under the act.

Mr. GRAVES OF LOUISIANA. Director, go ahead.

Mr. BUTLER. Mr. Chairman, Representative Gibbs, I will echo some comments here that Mayor Pete and Mr. Portune talked about. I think you are right. In Ohio we have got 89 communities that are under some type of a requirement to manage the stormwater and combined sewer overflows. Seventy-two of those work directly with the State of Ohio.

We take that innovative approach. We will use consent orders, but we will also use flexibility throughout the wastewater permit. We have got to reopen those permits in mid-stride if we see new technologies come in for development. And we are very flexible. We look at and use green infrastructure. We look at and use asset management and integrated planning. We think it is a great tool.

We talk with the other communities that perhaps are under the Federal consent orders. Many of these are billions of dollars. They are very lengthy. And frankly, once those consent orders are finished, it is very difficult to see them reopened. I think people misunderstand the idea of integrated planning. Therefore, you have many communities, even in Ohio, that have obligations under a Federal consent decree that are requiring them to spend more money than they otherwise would need——

Mr. GIBBS. I am just about out of time. But would you agree that the Federal consent orders create more of a controversial relationship, and to integrate the permitting concept, could bring a partnership relationship and we would actually get more stuff done?

Mr. BUTLER. I would agree with that. I think using this approach to the permitting process is a much more effective tool.

Mr. GIBBS. Thank you, Chairman.

Mr. GRAVES OF LOUISIANA. Thank you.

We are now going to go to Ms. Esty.

Ms. ESTY. Thank you, Mr. Chairman. Thank you to the panel for your thoughtful and grounded experience to help us fashion better, more flexible policies, which I think we are all in favor of stretching those taxpayer dollars to meet the competing needs, but without lowering standards.

First question for the panel: All of you have highlighted the importance of Federal funds to help communities meet these water-related infrastructure needs. But as many of you know, the primary Federal program to provide this assistance, the Clean Water State Revolving Fund, was last reauthorized 30 years ago.

Today we have got a bipartisan bill to reauthorize it with increased funding, perhaps not to the tripled level that was—much as I would like to do that, but to a greater level.

Would you urge this Congress to finally reauthorize an increase in appropriations for the State Revolving Fund program? If we can just go right down the line because I have got a bunch of questions.

Mr. BUTTIGIEG. Sure. We would absolutely welcome that in South Bend.

Ms. ESTY. Thank you.

Mr. DUPREE. We would absolutely support. But, Madam Congresswoman, not at the expense of smaller communities.

Ms. ESTY. Absolutely.

Mr. PORTUNE. Congresswoman Esty, thank you. America's counties would welcome that as another important tool in the toolbox. But we would add that flexibility to be able to introduce green infrastructure and things like that help us save money as well, and that is critically important as well.

Ms. ESTY. Absolutely.

Mr. Butler?

Mr. BUTLER. Mr. Chairman, Representative, the State revolving loan programs are critical to all of the States, including Ohio. They are our primary vehicle helping all communities—large and small, rich and poor—to help meet these obligations for clean water and drinking water needs.

Mr. GRAVES OF LOUISIANA. Thank you.

Mr. Spearman?

Mr. SPEARMAN. Yes, ma'am. Most definitely. And I would also encourage the subcommittee and committee to look at ways to simplify the use of these funds on the local level. Sometimes the biggest problem we have, with deference to my person from the EPA next to me, the States sometimes are one of the holdbacks in using it; and also increasing the use for stormwater activities.

I represent primarily MS4 [municipal separate storm sewer systems] communities, working with them that have different issues than the CSO [combined sewer overflow] and SSO [sanitary sewer overflow] communities. So making sure that they understand that they can use these funds also.

Ms. ESTY. Thank you. Mr. Levine?

Mr. LEVINE. Absolutely yes. As you heard in my recommendations. A significant increase, we believe, is needed, and some changes in the cap in order to encourage more grants and encourage more environmentally innovative projects.

Ms. ESTY. Absolutely. So I think we are all in agreement, I know. Chairman Graves and I have talked about this, the need to integrate new processes, new ways of doing things, again to have the best technologies and the best practices in place and not be locking in older, less useful, and often more expensive.

So we are committed to doing that, and your support as we go through this process will be vitally important for us to design the most appropriate legislation going forward that provides that measure of flexibility.

Second question: I would contend that in addition to providing additional resources for those unfunded Federal mandates, which those of us who have served in local office all really hate because our taxpayers, we have got to raise the money from them.

The Federal Government, I believe, should be exploring whether targeted Federal subsidies to assist individual households, lower income, which many of you flagged that challenge. And when you are serving a community, even rich communities have people who have economic challenges.

As you may know, in 1990 Congress authorized the LIHEAP program, the Low Income Home Energy Assistance Program. I know we use it extensively in every community in Connecticut. Would you support something similar to that concept, to help communities that low-income folks across the country, but particularly in communities that are hard-hit, to have that sort of a program like LIHEAP but for water resources?

Mr. BUTTIGIEG. Yes. Certainly a community like ours could put that to work right away.

Ms. ESTY. Thank you. Mayor DuPree?

Mr. DUPREE. Yes, Congresswoman. That would be something that we would use except for the fact that in some States, they do not allow you to have a two-tiered process. You cannot pay two different prices.

The other thing that I would say on that is that median income, that I think has been said by this whole process, needs to be revisited and maybe set it based on a lower tier than on a 2-percent median income.

Ms. ESTY. All right. Thank you.

Mr. PORTUNE. Congresswoman Esty, thank you for introducing another innovative approach to this. The main reason why clean water compliance is not happening across the board is due to the lack of funding, and that is directly related to the overreliance on the median household income approach to all of this.

So anything that would help to reduce reliance on MHI as a primary tool with respect to funding and would help our poor and the working poor to be able to assist in the obligations under the act would be another important tool in the toolbox.

Ms. ESTY. Thank you.

Mr. BUTLER. Bringing new tools to the table to help us with low-income communities, in addition to the good work through the SRF programs, would be welcome.

Ms. ESTY. Thank you.

Mr. SPEARMAN. When I go around and create stormwater utilities, one of the main issues that the local governments have is how it will affect their low- and moderate-income folks. And this type

of program would definitely help these communities generate the needed funds they need to help support the other goals of the Clean Water Act.

Mr. LEVINE. Yes, absolutely again. And the bill that is pending right now to create a pilot, we believe, is a good start but actually should be expanded as a nationwide program, exactly as you say, similar to the LIHEAP program and fully funded to meet the needs.

Ms. ESTY. Exactly. Thank you very much and I see we are over. I appreciate your indulgence, Mr. Chairman.

Mr. GRAVES OF LOUISIANA. Yes, ma'am. Thank you very much. I recognize myself for 5 minutes.

In a previous life, I served as a non-Federal partner with the Corps of Engineers on a number of projects, and we grew increasingly frustrated with that relationship. And there were a number of projects where we found that we could build the entire project by using the Corps of Engineers cost estimates and our 35-percent cost-share.

We could build the entire project. If I can say that again. So if it was a $100 million project, our cost-share was $35 million. There were a number of projects where we could build the whole thing for $35 million.

Mayor Pete, I want to go back to something you said, if I heard you correctly. You said that—according to my notes—$810 million is the value of the consent decree that you are facing right now. Is that accurate?

Mr. BUTTIGIEG. That is right, not including the financing cost.

Mr. GRAVES OF LOUISIANA. Yes. Which you said would perhaps exceed $1 billion.

If I heard you correctly, you said that with flexibility, including the use of green infrastructure, you believe that that cost could be reduced to what again?

Mr. BUTTIGIEG. That is right. So we got about $150 million in already. The remaining $700-some million could be reduced to $200 million if we are allowed to use the new approach.

Mr. GRAVES OF LOUISIANA. It is extraordinary. And look. We can certainly find a lot of things to fight about, and that is always fun to do. Of course, I am kidding. But listening to all your testimony, each one of you, I think, used the word "flexibility." You stressed the word "flexibility."

I do not think there is anyone who is sitting on the panel who has any desire to trash our environment or have your citizens living in a State that is unhealthy and an environment that is unhealthy, where you risk your citizens' health and safety. I assume that is OK to accept.

In many cases, folks think that all we need to do is throw more money at problems. And in some cases, that is the solution. But I think in this case, it may be a little overly simplistic and unrealistic in some cases because I know that local governments are strapped for cash. I know that many States, including my home State, we are running into significant financial programs. And the Federal Government, of course, with our $20 trillion debt, does not have unlimited financial resources.

I really think it is important that as we move forward on this legislation, that we continue to get your ideas on that flexibility. And I mentioned earlier that the city of New Orleans is under consent decree. The city of New Orleans, we worked with them in my previous life, where we actually began building wetlands assimilation projects to complete the treatment process in the central wetlands, working with St. Bernard Parish and the city of New Orleans, where we are restoring wetlands, which is an objective we have, and at the same time doing the final stages of sewer treatment.

Do any of you—Mayor DuPree, perhaps—do you have any other thoughts on the flexibility? And if you were given more flexibility, any assessments in terms of what kind of reduction that would potentially have in your work?

Mr. DUPREE. Yes, sir, Mr. Chairman. I honestly believe that if we look at partnerships—and I am talking about Federal, State, and local—we are under a Federal consent decree right now. We are under a Federal court order.

If we had the ability to partner, we could do things like public-private partnerships that would lower the cost. We could do things like design, build, operate, which would lower the cost, if we could work and have the opportunity to do that. Some States do not allow you to have that.

So if we had the support of the Federal Government and the State Environmental Quality, then we could probably lower—we could lower those costs because then there is a partnership. And we are not asking for money then; we are asking for innovative ways and flexibility to do things we are not allowed to do at this point.

Mr. GRAVES OF LOUISIANA. Thank you.

Mr. Spearman, I assume you have multiple clients that you work with. Do you have any examples or anecdotes of cost reductions that would occur as a result of flexibility, and perhaps even better environmental outcomes?

Mr. SPEARMAN. Well, I think that there are a lot of options available to us today. We have problems with the States and sometimes the regions in EPA, not necessarily being flexible enough to allow the things that are out there. I mean, we have had a policy on integrated planning and permitting for several years now and you are having to look at codifying these requirements to force the issue forward. And that is something that is very important.

There seems to be a disconnect sometimes between Washington, the region, and then the States, and down to the local level. So anything that we can do there to improve those communications and direction, and I think this hearing is a great start at that.

Mr. GRAVES OF LOUISIANA. That was actually going to be my next question, was I am curious with the integrated planning policy implemented in 2012. Do any of you have any inside information or any insight as to where this disconnect is occurring in terms of between the reliance on enforcement rather than having a more flexible approach, as identified or I think contemplated in the integrated planning process?

Mr. PORTUNE. Mr. Chairman, if I may, Todd Portune on behalf of NACo. And thank you for raising the issue.

I have been involved in working on this matter dating back to 2007, testified several times before this subcommittee in connection with the issue. The integrated planning policy that was brought forward in 2012, I will acknowledge, was a great step forward.

But what has happened since then is rather than EPA working more toward—the flexible approach has been more reliant on consent decree-enforced litigation largely because in our opinion, what we have seen, largely because the data that supports the old gray-build approach to fixing sewers has been around for so long, it is much more reliable.

And with respect to enforcement activity, there is a greater need or desire in the regions to rely on all of that data. The green infrastructure data is not quite as voluminous as the gray infrastructure data. So there has been a natural tendency to fall back on gray-build enforcement approaches, rather than moving forward with the flexible green-build approach.

I want to add very quickly to your previous question, though——

Mr. GRAVES OF LOUISIANA. If you could please wrap up, I am over time.

Mr. PORTUNE. Oh, I am sorry.

Mr. GRAVES OF LOUISIANA. Thank you.

I think we are going to go to Ms. Johnson for 5 minutes.

Ms. JOHNSON OF TEXAS. Thank you very much, Mr. Chairman and Ranking Member, for holding this hearing. I do not know that there is a subject that is more important to the citizens or to municipalities than relying on the water that we drink. And we know there are many challenges that States and localities face in coming into compliance with the legal requirements of the Clean Water Act—though I think we have done a fairly good job in this country.

Back in 2007, when I chaired this subcommittee, President Bush did a study—or his administration did a study—that we needed to invest $19 billion every term for the next 20 years to bring us up to level. We have never been able to meet that goal, though we have made some strides, I think, in ensuring clean water.

Limited resources, population growth, aging infrastructure, and other factors pose additional and costly obstacles for States and municipalities in an effort to respond to both their legal requirements and the needs of their communities. Integrated planning is one way to address these challenges, and in certain cases, when a city fails to meet these requirements, civil penalties are assessed.

And my question—let me start with Mr. Buttigieg from South Bend, Indiana, the city of Notre Dame. I graduated from that area before you were born.

[Laughter.]

Ms. JOHNSON OF TEXAS. Could you—or any other member, for that matter, on this panel—discuss what might you believe is a more reasonable alternative to civil penalties for local governments, which would also ensure that municipalities continue to make good faith efforts to improve their water?

Mr. BUTTIGIEG. Thank you, Representative Johnson, and thank you for speaking to the importance of the issue. I think this goes to the question of what the relationship is between cities and the Federal Government. Are we being regarded as a co-regulator and a partner, or are we being regarded as a regulated polluter?

And I think that civil penalties wind up, in a way, robbing Peter to pay Paul, especially in a low-income community, where you are effectively penalizing the very residents and citizens that we are trying to serve and protect.

You could envision another approach where, for example, if it came to that, there would be an enforced commitment that their dollars would go into some kind of fund that would continue to benefit residents. But I think the most important thing is the mentality, that it focuses not on penalizing those units of Government that are trying to do the right thing but coming up short because of the limitation in resources, but rather only those that are refusing to work in good faith.

Ms. JOHNSON OF TEXAS. Thank you. Anyone else wish to comment—yes?

Mr. BUTLER. Mr. Chairman and Representative Johnson, thank you for that question. One concept that we have not talked about and we use a lot in Ohio—and other States do, too—is using supplemental environmental programs in lieu of civil penalty.

We agree with you that the idea, also articulated by Mayor Pete, of taking a civil penalty and having that money come to the State or the Federal Government and then not seeing it invested back into the community is something that we think is counterproductive in many cases.

There may be an opportunity in some cases where you have to use civil penalty as a tool, but in many cases we think that money should be and could be plowed back into the community through supplemental environmental projects on other further upgrades to the drinking water or wastewater systems, green infrastructure, integrated planning, or asset management, or any small number of tools where you can invest those dollars and see them pay multiple dividends to the community.

Ms. JOHNSON OF TEXAS. Thank you.

Mr. PORTUNE. Congresswoman Johnson, Mr. Chairman, it is an excellent question. And with respect to the position of counties, the issue of civil penalties is counterproductive to what we are all trying to accomplish here because it does divert money away from the very needs that are at hand at a time when the availability of funds is so restricted and so narrow with respect to the matter at hand.

Flexibility, the ability to apply things that provide more efficient and effective ways to do this that save money, is also something that is critically necessary. And we would also add that a focus on water quality, instead of just simply volume reduction in approaches to things, puts the issue right back where it needs to be.

But at the end of the day, we want to have a partnership with EPA and not be considered—and I think Mayor Buttigieg put it very well—as regulated water polluters. We are all working for the same thing.

Ms. JOHNSON OF TEXAS. Thank you very much. My time has expired.

Mr. GRAVES OF LOUISIANA. Thank you. I recognize Mr. Massie for 5 minutes.

Mr. MASSIE. Thank you, Mr. Chairman.

I represent 20 counties in northern Kentucky, but 3 of those counties are within a sanitation district that has about 100,000 wastewater accounts. They are under consent decree. This is Sanitation District 1. It is Boone, Kenton, and Campbell Counties, directly across the river from Cincinnati.

When they signed their consent decree, they thought they were signing up for a $700 million burden. But it has now become a $2 billion burden. I just did some quick math here. Two billion dollars divided by 100,000 accounts is $20,000 per account. That is like an economic blight on the region.

Every household that has this account is now encumbered with that, and if you build a new house there, you basically are going to take $20,000 off the long-term property value because now you have the benefit of being covered by this legacy obligation.

There are 300,000 people within that district. If you just go every man, woman, and child, it is about $7,000 they owe to this. At this scale, it almost seems like they could build their own wastewater treatment facilities at every house at $20,000 an account. So there has got to be something more efficient here. Households are ultimately, as their rates go up, they forgo preventative maintenance on their houses and things.

Mayor Buttigieg, I want to ask you, what are some of the things that you are not able to do now that you would like to be able to do? Because I would like for my community to have that flexibility as well.

Mr. BUTTIGIEG. Well, a lot of it is this green stormwater infrastructure. If we are given the flexibility to use that in our approach, then we can prevent a lot of the water from going into the system in the first place. That is the appeal of rain gardens, green roofs, permeable concrete that effectively drinks the water rather than it sort of sheeting off and going into the system.

It is a lot more attractive than a system of gray infrastructure that only contemplates tunnels and tanks. At one point we actually had to contemplate, in order to meet the original consent decree, we were talking about deep rock tunneling. It would be like building a subway in a city of 100,000 people. Much as I would love to have a subway, it did not really add up.

Mr. MASSIE. So you would need a submarine for that subway, too.

[Laughter.]

Mr. BUTTIGIEG. We are getting smarter and smarter about how to do this, and that is why we think integrated planning makes so much more sense. But the flexibility, and to go to an earlier question that was raised, is also very uneven in its application.

Whenever we get together in the mayor's water council, we are always comparing notes. How is your region? Did they let you do this? Ours is not. Who is better? Who is worse? It seems that even if you feel that the EPA leadership in Washington is singing the same tune as we are about some of these integrated approaches, sometimes it has to go through a bit of a gap in the regional offices. And we know that——

Mr. MASSIE. So there is too much gray area in the gray water?

[Laughter.]

Mr. BUTTIGIEG. That is one way of looking at it, Congressman, yes.

Mr. MASSIE. That was my only question. I would like to yield the remainder of my time to Congressman Gibbs.

Mr. GIBBS. Well, on the consent decree, we have really brought that out. But I want to have Director Butler talk a little bit more on the integrated permitting, some of the benefits we have seen, and in the Columbus blueprint plan you basically use—I think you have done that integrated planning in a de facto way using the NPDES permitting process. Can you expound on what has happened and the successes?

Mr. BUTLER. Sure. Mr. Chairman, Representative Gibbs, Columbus is another place where a multibillion-dollar project has recently, in the past few years, come back to us and we have talked not only about green infrastructure, but about the comprehensive integration of integrated planning. This was really not a concept that they were familiar with when they signed onto the consent decree in the mid-2000s.

So they went so far as to not only just include the gray water, but they started looking at wet weather and stormwater, integrating that into a total plan, looking at green infrastructure, where it was appropriate and where it made sense, rebundling through our NPDES permitting process while they were still under consent order. That saved them a multibillion-dollar project and it saved them hundreds of millions of dollars a year.

I just want to give one caution, if I am permitted here. Green infrastructure is a new concept. You have to be very careful in how you use it. Sometimes you do not get the benefits that you expect, and frankly, it does not always save you money.

But there still is an inherent benefit that comes along with it. You are able to then open up some green spaces versus building a tunnel. You are able to bring in some stormwater infiltration concepts. It really starts bringing some community vitality and green space back in, which then raises the overall value of the property values.

So it is a real balance. It is a tool that should be integrated into this integrated planning model. But it does not always work. You just have to be careful and make sure that you use it appropriately.

Mr. GIBBS. Thank you. Thank you, Chairman.

Mr. LEVINE. Mr. Chairman, might I add briefly to that response?

Mr. GRAVES OF LOUISIANA. I think we are out of time, but will see if we can get back to you.

Mr. LEVINE. Thank you.

Mr. GRAVES OF LOUISIANA. Let's see. I guess we are going to recognize Mr. Lowenthal for 5 minutes. The gentleman from California.

Dr. LOWENTHAL. Thank you, Mr. Chair. And I want to also thank all the witnesses. It has been very educational for me listening to the importance of integrated planning. And you have clearly educated us on the challenges that you all face in terms of what local governments and municipalities have to do in complying with the Clean Water Act, their requirements, with your limited resources. And I appreciate that EPA has begun to work with you about de-

veloping new approaches that lower cost but still meet water quality and environmental standards.

But I want to emphasize, just before I ask the questions, something that has been brought up by many of you on the panel, that we are not talking about the weakening of the standards that are so important to the health of our community. And this should not be used as a rollback of the Clean Water Act. We have seen examples when we have done that, when we have let costs just dictate it, i.e., Flint, Michigan, where costs dominated what could be done.

I am very concerned because as we move forward, that we will see in the next budgetary process that the President has recommended a 31-percent cut to the Environmental Protection Agency. I think that would be devastating. That would be just—all the discussions that we have had today, I think, would end.

My first question is for Larry Levine of NRDC. In your testimony, you expressed support for the general concept of integrated planning. But like what I just mentioned, you caution us that not all integrated planning bills currently before this subcommittee approach integrated planning in the same manner. And you suggest that House bill 465 "would roll back existing standards." It would roll back the Clean Water Act protections.

Can you talk to us a little bit on how you see H.R. 465 weakening existing Clean Water Act protections under the guise of integrated planning?

Mr. LEVINE. Yes. Thank you, Mr. Lowenthal. So in several ways, the bill would roll back key protections under the act.

The language in the bill would use both cost, under the heading of economic affordability, and a new terminology in the act of "technical feasibility." And the definitions for those terms would use those to do an end run around water quality protections currently in the act.

The Clean Water Act already includes ways to account for cost and technical feasibility, such as the process for doing a use attainability analysis or a variance from water quality standards under very limited circumstances and subject to the approval of EPA, just as any other change in a State water quality standard must be approved. The bill, unlike that process, would inject these cost factors into individual permitting decisions at the discretion of the individual permitting agency.

Other language in the bill treats wastewater and stormwater as though it were not a core public service. It indicates the importance of balancing the cost of Clean Water Act compliance against money that might be diverted from other "core public services." That is a misframing of the entire issue. I think we all would agree that urban and municipal wastewater, stormwater, drinking water services are all a core public service.

The bill also essentially puts on blinders to ways that municipalities and utilities can reduce cost burdens on low-income households while generating the revenue that is needed to meet Clean Water Act goals. So, for example, rate structures, while there are State limitations in some places on the way that local rates can be structured, there are also many things that can be done to have more equitable rates that place costs more fairly on who is putting the

most burden on the system, which will tend to help low-income households.

The bill also substitutes this notion of "reasonable progress" for actual compliance. Existing law has requirements for what a compliance schedule must look like and what it must achieve. A compliance schedule must require compliance as soon as possible with interim milestones along the way to ensure accountability for making those steps as soon as possible toward ultimate compliance. It does not, under current law, lower the bar for what ultimately has to be achieved at the end of the day.

And I will briefly mention two more points. The bill fails to account for the benefits of investing in clean water, while focusing exclusively on the costs. It is important that communities have a return on the investment they make. It is not simply a liability.

And finally, other language in the bill provides essentially a one-way ratchet to weaken requirements and integrated plans. There is language that speaks of revisiting plans when permits are renewed in order to consider modifying or removing requirements to "help the municipality comply." That clearly seems to be an intent to consider weakening plans over time rather than ensuring compliance in the long run.

Dr. LOWENTHAL. Thank you. And Mr. Chair, just before I yield back, I would like to say my legislative director just received her Ph.D. from the University of Notre Dame, and she is always talking about Mayor Pete in a very positive way.

Mr. GRAVES OF LOUISIANA. Fantastic. We are looking for better environmental policy out of you now.

[Laughter.]

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Lowenthal.

We are going to turn to the gentleman from Texas, Dr. Babin.

Dr. BABIN. Thank you very much, Mr. Chairman, and thank the witnesses for being here. Appreciate you.

I am not real sure who to ask this question of but I think, Mr. Butler, it might be to you. But if anyone else would like to chime in on this, I would appreciate it.

According to a recent Boone and Crockett Club—if you are hunters, you have heard of Boone and Crockett—but according to a recent Boone and Crockett Club analysis of the "Function 300" section of the Federal budget, it says, "Natural resource programs can provide the underpinning for a strong economy and rural quality of life."

The report further says that, "The sum of our investments in conservation has been to secure the foundation for the use and enjoyment of America's natural resources."

The city of Orange, Texas, which is in my district, located on the Louisiana border in the southeast Texas corner, hosts one of the Nation's top-rated bass tournaments on the Sabine River at Toledo Bend Reservoir. And the local Chamber of Commerce hosts several other water-based tourism events annually that epitomize the best of the small-town, family-friendly, outdoor recreational lifestyle.

Yet there are two bayous nearby that need urgent attention, and the water utility ratepayers of some neighboring communities have fixed income residents and cannot afford higher taxes. These are

communities that lost population after the devastation of Hurricane Rita in 2005.

They qualify for USDA community assistance, but they are not able to make capital investments in their local infrastructure because building permits are blocked because of water quality issues that they simply do not have the resources to fix on their own.

So I would ask this question: Do you believe Federal priority, a focus for water quality grants, should be focused on those types of circumstances, where communities lack the local resources to fix the problems and therefore cannot grow their way out to a better economy because of the EPA denial of permits due to water quality? What do you suggest is a remedy for this obviously catch-22 situation?

Mr. BUTLER. Mr. Chairman, Representative Babin, I know about the Boone and Crockett Club but I am not a member and I wish I were. So Ohio is not much different. Lake Erie is the wildlife capital of the world; it has $14 billion of annual economic impact in the State, so truly recreation drives a lot of investment for sure.

I will speak to your question this way, which is the State revolving loan funds we have talked about under the Clean Water Act, the State of Ohio has capital grants of about $100 million a year. We turn that into about $1 billion every year of investment in drinking water and wastewater infrastructure.

I noted in my testimony we have about $14 billion of infrastructure need. So while we think it is a fantastic story to tell about what we have done, it does not really catch up to the need that we have that continues to grow in the States. That need is particularly skewed, if you will, towards low- and moderate-income communities.

As much money as we can offer through loan programs, or even a modest amount through principal forgiveness of grants, as Mr. Levine talked about, the need is substantial, whether we are combining that just with our State revolving programs or combining it with USDA dollars or other Federal and State dollars.

It is very, very difficult, and there are always more communities on the outside looking in than we can provide funding for to help them out of this catch-22 situation. They cannot go and offer economic development either through recreation or through business development because they do not have the capacity in their wastewater facilities to upgrade those systems to offer that capacity for economic development.

So while I think States are proud of their investments through the State revolving programs, the catch-22 that you mentioned is something that still exists in a significant way and is something that we need to find the solution for going forward.

Dr. BABIN. I certainly hope so. In just a few seconds, would somebody else like to——

Mr. BUTTIGIEG. Very briefly, if I may, Mr. Chairman, Congressman——

Dr. BABIN. Yes, sir.

Mr. BUTTIGIEG [continuing]. We believe that one of the virtues of integrated planning is that smaller communities can pool their resources. So when you are in an area like that, instead of three communities doing three tanks and three tunnels, maybe one can do

a tank and a couple others can do green infrastructure. So coming together, we think, allows more efficient problem-solving even among communities joining forces.

Mr. DUPREE. Yes, sir. And at the same time, we used to talk about affordability. It does not take into account the CSOs or the SSOs. It did not—that is all it does. It does not pull in drinking water because it is so expensive. And so when we talk about subsidies for water, we need to make sure that although we are increasing the State revolving loan fund, we do not take money from other programs that they could benefit from.

Dr. BABIN. Great. My time has expired. Thank you very much. Appreciate it.

Mr. GRAVES OF LOUISIANA. Thank you. I will now go to the gentlewoman from Illinois, Mrs. Bustos.

Mrs. BUSTOS. Thank you, Chairman Graves.

First of all I would like to give you a little background and then I will get right into my questions. This will just take a second. But I represent part of a city called Peoria, Illinois. You know the old saying, "Will it play in Peoria?" A town of 115,000 people. The Illinois River runs through it.

So right now they are looking at what would be considered an innovative, cost-effective solution using green infrastructure to address combined sewer overflows. But even—as we call it, it is termed cost-effective; it has got a $200 million price tag. All right? So pretty costly.

And I know that Peoria and towns across the country need the EPA to be partners in working to improve water quality and upgrade our aging water infrastructure. And I know that also means that we do not need to weaken the Clean Water Act, but it does mean that we need to give our towns, our cities, tools to look at integrated planning and resources they need to support investment in water infrastructure, and also to create jobs. So certainly appreciate all of you being here and testifying before us today.

So in Peoria—this is my question now—this plan is to reduce the water overflow, the combined sewer overflow, into the Illinois River while also beautifying the streets and the areas in the city's older neighborhoods.

So my first question will be for Mayor DuPree. You mentioned that your city is part of the EPA's green infrastructure pilot program?

Mr. DUPREE. That is correct.

Mrs. BUSTOS. How did your city become interested in using the green infrastructure to help address the water quality? And do you have thoughts on how the program is going so far? If you could share that.

Mr. DUPREE. Well, I think it is going well. One of the things that we had, not only are we under a consent order, an amended, agreed order, we also are working with EPA on the sanitary sewer overflows. They have cited us for almost everything you can count on.

We had to look for innovative ways in order to make that happen. And this is actually a way that EPA and the city and the State came together to form this coalition so that we could come

up with innovative ways to do something. That is what integrated planning is all about, is about seeing if it is affordable.

We understand that if it is not affordable, it is not sustainable. So you have to work all those things together, and that is a way the partnership actually works. And hopefully they are going to come down in the next month or so and we are going to actually have a schematic to work on green infrastructure. And hopefully it will be a pattern that can be used across the United States.

Mr. PORTUNE. Mr. Chairman, Representative Bustos, if I may, in Cincinnati, Hamilton County, we also had an approved green infrastructure alternative to what was originally in our consent decree, which was a massive $500 million deep tunnel approach.

The actual cost of our green approach to do the same thing, reducing the CSO issues and the volume of water that we were required to address, was almost cutting that in half. Our final cost on it is projected to be $244 billion versus $500 billion. It is actually a little bit less than half of the cost was saved.

But there is one other thing about cost savings that no one has brought up that I want to also quickly add. Green infrastructure keeps water out of the sewer system. That produces an additional benefit to operational costs because you are not treating so much volume at the back end. So not only does it reduce costs on the front end in terms of capital expenses, but operational expenses of the sewer district are reduced as well to increase the benefit.

Mrs. BUSTOS. All right. Thank you, sir.

Mr. Levine, if green infrastructure is cost-effective and provides benefits in terms of quality of life and public health, why are more communities not using it? And do you have thoughts on how Congress can help with that?

Mr. LEVINE. That is a great question. It is important to recognize that a lot of communities are using it. Especially in the last half-dozen years or so, as EPA has made important steps forward and called attention to the ways in which the existing Clean Water Act scheme allows for, and can even be used to encourage, green infrastructure in permits as well as consent decrees to meet CSO obligations, to meet municipal stormwater obligations, to meet in some cases sanitary sewer overflow obligations.

We have talked a lot about flexibility in the testimony and responses to questions and answers. I think, really, the word is being smart, is what I would say. It is not about new flexibility that is needed. It is about doing things in a smart way. And in many instances, as Mr. Butler pointed out, for example, green infrastructure will be the smartest way to do it.

In some other instances it may not. But being smart about this allows us to be cost-effective, allows us to achieve the maximum benefit for the investment, not only the benefits to clean water but the benefits to neighborhoods, the benefits to communities. And in fact that also, when you consider the wide range of benefits, allows you to tap into additional sources of money as well.

When you are serving multiple benefits, you can tap into, for example, community revitalization dollars, or transportation dollars that are going towards rehabilitating streets, and get green streets as part of that project, and get the water benefit as well.

So I think part of it is a need for greater realization and understanding among those communities that have not yet done so of what all those multiple benefits are. I think Congress can certainly encourage that with the ideas like, in a couple of the bills, dedicating EPA resources towards promoting green infrastructure, establishing that as an office within EPA; and then, of course, by using Federal funds such as the SRF to direct dollars towards these sorts of projects that have tended to be underfunded the way States have used the SRF in the past.

Mrs. BUSTOS. All right. Thank you. My time is expired. I yield back.

Mr. GRAVES OF LOUISIANA. All right. Thank you.

I am going to go to the gentleman from Texas, Mr. Weber, for 5 minutes.

Mr. WEBER. Thank you, Chairman.

Mayor Pete, pronounce your last name for me.

Mr. BUTTIGIEG. Buttigieg.

Mr. WEBER. Buttigieg?

Mr. BUTTIGIEG. Yes, sir.

Mr. WEBER. Have you had that name long?

[Laughter.]

Mr. WEBER. You made an interesting statement earlier. You said you felt like the cities should be regarded not as regulated polluters but—what was the other half of that?

Mr. BUTTIGIEG. Partners, or even co-regulators.

Mr. WEBER. Co-regulating partners. OK. That is an interesting concept, and I agree with you, by the way.

And Mayor DuPree, you know the answer to this, or you may both know the answer to this. How many—you all are up here with the Council of Mayors. Is that correct?

Mr. DUPREE. National League of Cities.

Mr. WEBER. National League of Cities?

Mr. BUTTIGIEG. I am here with the Conference of Mayors.

Mr. WEBER. Repeat?

Mr. BUTTIGIEG. I am here with the U.S. Conference of Mayors.

Mr. WEBER. Conference of Mayors. So how many mayors' cities are reflected in here, Pete, with your organization?

Mr. BUTTIGIEG. The Conference of Mayors is 1,400 mayors overall, some but not all of which have CSO issues.

Mr. WEBER. 1,400. And I see the answer to the League of Cities has been delivered.

Mr. DUPREE. 19,000 cities.

Mr. WEBER. 19,000 cities. OK. And I will go right over to counties here, Mr. Portune. Is that how you say that?

Mr. PORTUNE. Yes, sir, Congressman Weber. Thank you. 3,069 counties in America.

Mr. WEBER. 3,069 counties in America. Do any of you have any idea—when you talk about consent decrees or fines that have been levied if you will, do any of the three of you, or any of you at the panel, have any idea what the sum total of that dollar amount is?

Mr. BUTTIGIEG. I would refer you to the written testimony that is submitted. There is an Appendix 1 from the U.S. Conference of Mayors testimony listing out individually—I do not see a total

here, but it certainly runs well into the millions among the cities that have been fined.

Mr. WEBER. Just into the millions?

Mr. DUPREE. I would probably say it would be more than that. I mean, if——

Mr. WEBER. Right.

Mr. PORTUNE. Congressman, if I may, this is not fines, but there was a count done. There are 781 counties, cities, or sewer districts that are involved in consent decrees. EPA estimates the cost of compliance with those consent decrees to be $150 billion. We have also received estimates that suggest that the number may be close to $500 billion. Regardless of how you look at it, it is a lot of money.

Mr. WEBER. Oh, absolutely it is. So that is the vein I am in. So if it is $150 billion or $500 billion—let's just take an average. Let's say $250 billion. All right? What is that, one-quarter of a trillion dollars? You know, $100 billion here, $100 billion there, pretty soon you are talking about real money.

Mr. BUTTIGIEG. Yes, sir.

Mr. WEBER. So do you know the fines as related to that? Anybody? What I am getting at is what if we could take the money that the cities are having to pay and apply it to that? Any kind of ratio? Anybody have any kind of idea?

Mr. DUPREE. I do not have a ratio, sir, but we have worked with the EPA on this itself in order to put those monies back into the community. I think that is what we have been talking about.

Mr. WEBER. Sure.

Mr. DUPREE. Instead of actually fining them and they are going off to an abyss somewhere, actually put them back into planning to make projects work better. But in order to do that, there has got to be a partnership. You have got to start working together and not just arbitrarily——

Mr. WEBER. That is why I liked Mayor Pete's comparison there. Not a regulated polluter but a—what was it?

Mr. BUTTIGIEG. A co-regulating.

Mr. WEBER. A co-regulated partner, I think was the word you used, which I like those terms better.

So someone said earlier up here from this side that the fact that the EPA was getting cut 30 percent was probably problematic. But what if we took those regulators and those salaries and all the money that is spent from the EPA's standpoint and we said, look.

If we got regulating partners in the cities and the counties, would we really need that much Federal regulators? I mean, if their job is to go down and tell you what you already know is wrong, what you already know needs to be done, and by the way, we are going to fine you for that? Would it not—Mr. Butler, you want to weigh in on that?

Mr. BUTLER. Yes, please. Mr. Chairman, Representative Weber, through the Environmental Council of the States, the organization represents all of the States, we have engaged with new Administrator Pruitt under his concept of cooperative federalism. And in short, I think what he means, and we understand and agree with, is how do you reset the relationship and have this conversation between the Federal EPA and States? We are co-regulators.

How do you set the arrangement between us? We look at what they are good at and what they should do versus what the States should have primacy for since we are fully delegated States. We welcome that conversation. We are having that now under this idea of cooperative federalism.

So frankly, how do you have the Federal EPA get out of the way of the States so we can do what we need to do in many cases? We do not mean that in a way that indicates they do not have value. We think that they do. But frankly, there is a level of duplicity in many cases that we think that there is not value. And you could take——

Mr. WEBER. Oh, there is value. We are paying for that. You can put a dollar value on the money that is being allocated that is not going to the communities. Yesterday there was a news release by the EPA—I do not know, maybe you all saw it—it is WIFIA, Water Infrastructure Finance and Innovation Act, I guess is the——

Mr. BUTLER. WIFIA.

Mr. WEBER. WIFIA. WIFIA?

Mr. BUTLER. WIFIA. Yes, sir.

Mr. WEBER. WIFIA. OK. So you all are aware of it, there is $1.5 billion for water infrastructure projects. So we just got through saying earlier there was $150 billion to $500 billion in compliance actions, to come into compliance. Is that what we are saying? So what does this mean from yesterday? Does that mean you can get low-interest loans? What does that mean to cities and counties? Anybody?

Mr. DUPREE. Well, you have to apply, first of all. It started as a pilot program, I believe. And so I think it has been funded. You have to apply for it in the first round in order to participate in it. But it is more of a loan program than a grant program.

Mr. WEBER. So it does not fix the long-term problem if EPA tells you that you have problems, and now you need to pay them for telling you?

Mr. DUPREE. Well, it goes a long way to start the process. It takes a lot more than what Honorable Portune just rattled off with those numbers. The numbers, they are enormous, the amount of money it is going to take to fix the infrastructure, the water, sewer overflows that we have in America.

The city of Hattiesburg is 133 years old. We have not only a storm sewer overflow, a sanitary sewer overflow problem, we have a wastewater problem, we have a water problem, and they all come on top of each other. And without us working together and planning to try to solve that problem and how do we pay for it, then it is not going to happen.

Mr. WEBER. I got you. Thank you. I appreciate that.

Mr. Chairman, thank you for the indulgence. I yield back.

Mr. MAST [presiding]. Any time.

We will go to Mrs. Lawrence.

Mrs. LAWRENCE. Thank you so much. I want to say for the record that being a member of the National League of Cities and the U.S. Conference of Mayors, I really do appreciate and thank you for being here, and the counties and the other speakers.

Mr. Butler, I do want to say I too welcome a conversation about the States and the EPA interaction. Many of you know I represent

the State of Michigan and lived through a horrific example of a failure of connection and checks and balances when it comes to water infrastructure.

And when we are talking about this and we have to talk about the dollars, water is a basic human need and we have to treat it as such. It is not a luxury. And our investment in our water infrastructure is something we have kicked down the road, and I pray to God we never had another Flint situation. But that should have been our awakening. Nine thousand children are still suffering from the results of that. And so I am very passionate about this issue.

Mr. Levine, you said in your written statement, "The United States must significantly increase the investment in municipal water infrastructure to protect public health and the environment." In your opinion, if Congress does not increase the Federal investment in our Nation's clean water infrastructure, will acting on this planning legislation be enough for the communities to meet their clean water needs?

Mr. LEVINE. Thank you. Absolutely not. It will not be enough by itself. There is a need for three things that go together. One is smarter efforts, along the lines of integrated planning, that will find the most cost-effective solutions to get us—if they can be implemented, get us where we need to go as quickly as possible, as cost-effectively as possible.

Second is there need to be additional Federal and State dollars to assist what local utilities and local governments are able to generate as revenue on their own because what the locals can generate on their own is not going to be sufficient.

Third, there is a need to make sure that when local revenue is generated—because additional local revenue is also needed——

Mrs. LAWRENCE. Exactly.

Mr. LEVINE [continuing]. That when that local revenue is generated, it is done so in a fair and equitable way that does not place undue burdens on low-income households. And there are ways to do that. There are ways that Congress can help do that. There are ways that States can help do that. There are ways that locals can help do that.

Mrs. LAWRENCE. And this is an issue. Affordability of water is becoming an issue in America that is very concerning. And that issue must resonate to a level of high priority.

Mayor DuPree, thank you for your support of the Water Quality Protection and Job Creation Act, a bill that will authorize the clean water at $20 billion over 5 years. I am proud to be a cosponsor of this legislation and happy to say every Democratic member of the subcommittee supports this legislation. Can you describe how important it is for Congress to take action on this legislation?

Mr. DUPREE. Thank you for the question, Mrs. Lawrence. Just in Hattiesburg alone, we have a $150 million project on wastewater, probably $46 million or $45 million that has to do with sanitary sewer overflows. And then we have water quality. We have not lead pipes but we have asbestos, asbestos-lined pipes that probably are going to be $50 million. So we are talking about $200 million to $300 million of projects. And part of my community, 37 percent, is below the poverty line or at the poverty line.

Mrs. LAWRENCE. Wow.

Mr. DUPREE. There is no way—there is a breaking point where you cannot afford to do any more than what you are doing. We have spent about $45 million in bonds already to try to solve the problem. That is about as far as we can go. That is why we are all up here.

Mrs. LAWRENCE. Yes.

Mr. DUPREE. Affordability is one of the problems. And having help is one of them. Becoming—I almost said co-conspirators—becoming co-partners in what we are trying to do, and that is trying to provide quality of life and health for people that we represent.

Mrs. LAWRENCE. Yes.

Mr. DUPREE. Economic development for people we represent. Without the bill that you have sponsored, I do not think we could—and it is just a start.

Mrs. LAWRENCE. It is just a start.

Mr. DUPREE. But it is a great start. If we could get that bill started, I think it would help not only cities like Hattiesburg, but cities across the United States.

Mrs. LAWRENCE. Thank you. In my time that is left, I just want to make sure that I put on the record that the investment in our water infrastructure should be a priority, based on the fact it is a basic human need and based on the fact of the environment, and we cannot reproduce our water source.

And the fact that we have lived through a documented demonstration—I am sad to hear about the asbestos in the water. Ladies and gentlemen, we have to drink water. And if you are poor and the only source of water is from what you turn on in your faucet, you are subjected. You are subjected to that.

And as we talk about infrastructure and the dollar and legislation, water should elevate to be a priority in our investment. Thank you, and I yield back.

Mr. MAST. Thank you.

The Chair will now recognize my friend, Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. And I apologize for not being here for much of this because it is multi committees, same time around this place. So thank you for your indulgence if I am asking questions that might be a little duplicative, but hopefully not. Anyway, thank you to the panel for appearing here, and for the committee.

I have a district that is very rural in far northern California, a lot of very small towns. And some of them are incorporated and some of them are not even incorporated. So my constituents, whether they are city council, city managers, or farmers, have not had a very good experience with the EPA, especially in very recent times.

So the issue is, what the EPA says it is going to be doing is often hard to hear behind the truckload of paperwork and redtape you have to sort through first, trying to finally get to an end goal that probably most people would mutually agree would be a pretty good end goal.

Clean water systems, it is a high priority. Sewer systems that do not fail, that do not overflow, whether it is a rain situation or flood, we all want these things. And so a lot of times these municipalities

have been in a depressed economy, a depressed region, and so for them to work through this, they do not just instantly have, for a small town, $5 million for a water treatment plan or what have you.

That just does not come out of a small town that has a lot of its storefronts boarded up due to the economy. Maybe some of my wooded areas in northern California, the timber industry has been run out of business by other environmental concerns. So they do not have the economy any more.

So it is hard to understand whether the EPA really, really understands themselves how a small town like Dunsmuir, California, or Hamilton City, California, can struggle to follow every single requirement that are put on them simply because they do not have the money or the staff or the time to get every single detail right. Then boom, a bunch of fines or a threat of fines.

So a question for several of you on the panel here. I will try Mr. Buttigieg, Mr. DuPree, and Mr. Portune. Please all take a whack at this. What do you feel the factors the EPA does consider when they are working with small communities? And then the second half: What additional factors should they be considering when they work with smaller, mid-sized communities like this to make sure that they are not completely overwhelmed by the requirements?

So please, the three of you. And we have got to be somewhat economical on time. Thank you.

Mr. BUTTIGIEG. So I think the only—the primary factor is compliance. And of course, we all want compliance, but we want it to happen with regard to affordability. Sequence also matters, being able to do what is most important first. And this is where the flexibility and the variances are important.

One story that is often heard in the Mayors Water Council is that of Lima, Ohio. There is a river that is required under their consent decree to be fishable and swimmable. It is 4 inches deep at its highest; it actually runs dry part of the year. Nobody is ever going to fish or swim there. They still want it to be clean, but the question is, is that the right priority? Or if the EPA were encouraged or permitted to take sequence and affordability into account, would that have been a lower priority than more urgent needs?

Mr. LAMALFA. So maybe two or three things you could do. This one will clear it up 80 percent; this one will be 10 more percent, and this thing will be 5 more percent. Maybe we should try to do the 80-percent thing on cleanup on water quality if it is the most affordable.

Mr. BUTTIGIEG. Yes. Often we talk about the knee of the curve. So in South Bend's experience, I will not try to recreate the visual aid. But basically, we got 75 percent of the benefit with the first 20 or so percent of the cost. And now we are at the knee of the curve and it is going to shoot up. And each incremental bit of benefits is going to be much more expensive than the first phase.

Mr. LAMALFA. Mr. DuPree?

Mr. DUPREE. Yes, sir. I would think that EPA would need to take some of the things into consideration, like poverty, employment or unemployment rates, residential factors. They need to look at the income of the low-income community that you have.

Mr. LAMALFA. So the affordability of what is even going on in the town there?

Mr. DUPREE. Yes, sir. And the median income. The median income is set basically at 2 percent. And maybe we need to look at the lower rates. Those who are low income, set the rates based on them and not a cookie cutter, not a 2 percent across the United States, because all of our citizens are not the same.

Mr. LAMALFA. Yes. Thank you.

Mr. Portune?

Mr. PORTUNE. Congressman, thank you for the question. Your question actually demonstrates why there is a need for Congress to take action and to codify the integrated planning because since EPA announced it in 2012, they have not implemented it or taken advantage of it as much as they can.

States are far more aware of the need for flexibility than EPA has been, and integrated planning will allow for this bundling of interests to come together to prioritize need based upon the availability of funds to get the biggest bang for your buck. Your example of the three separate elements was a perfect one, a great one, why integrated planning is necessary.

And I would also add quickly that with respect to rural communities, America's 3,069 counties are not all urban. They are a wide range.

Mr. LAMALFA. Thank goodness.

Mr. PORTUNE. Yes, sir. And it is the smaller counties or the more rural counties that may not have the resources to be able to figure everything out. That is why we need EPA as a partner and not as a regulator, so that with this flexibility, bringing in State agencies, bringing in others, you can look at not only what the demands and the needs are, but everyone is working together then in a footing as a partnership to figure out what the best approach needs to be. And that is just simply not happening right now.

Mr. LAMALFA. Yes. On my ranch, I like to choose my partners, but I know what you are saying.

Mr. PORTUNE. Yes, sir.

Mr. LAMALFA. So getting ready to yield back, Mr. Chairman. So the bottom line, what I heard and is one of my other points, is that integrated planning needs to be pushed forward farther and faster instead of on the back burner like it has been so far. Yes or no?

Mr. PORTUNE. Yes.

Mr. LAMALFA. OK. Thank you. I appreciate it, Mr. Chairman.

Mr. MAST. Thank you, Mr. LaMalfa. I am going to give myself about 5 minutes now.

I appreciate all the comments. One of them that actually stuck out to me very well—I think it was from you, Mr. Butler—you made a very important point I think we should all remember up here in Washington constantly.

Are the cities, are the States, those entities, are they meant to be regulated entities, or should we be looking at you all as peers that have just as much been elected as we have been elected up here, and are supposed to be partners in this project that is our community and making it better? I think it is something we should continually remember in that.

I want to get to a little bit more the issue of affordability. And recognizing that we are all elected, we are not spending our own money. We are spending the work of somebody else's hands every single day at whatever level that we are at.

So I want to ask, to each of our mayors, if you were given the reins of the EPA, if you were given the reins to it, what steps would you take to address the affordability in the context of the integrated planning and permitting policy? And you can start at whichever end of the mayors you want. I do not care.

Mr. BUTTIGIEG. Well, the power of the purse, of course, is over here and not in the agency. So needless to say, we would benefit from more resources coming our way.

But in terms of what the EPA can do regardless, again the biggest thing we need is partnership, the ability to take, for example, a more sophisticated measure of affordability into account than just that 2 percent across the board of median household income because it does not really capture what is happening to the folks who are on the short end of that half, that are in the median.

The ability to cross-pollinate green infrastructure solutions from among different communities—mayors have to solve these problems locally every chance we get. And so we are cooking up good ideas. Now we need the flexibility to use them, and the EPA could actually be a very helpful forum sponsoring our ability to take them to scale, to share them, and to deploy them more widely.

I think there is a lot that we can do as a partner if we can just get that handshake between us and Federal partners who share the same goals, get that handshake to be more effective and more efficient.

Mr. MAST. Great. Mr. DuPree or Mr. Portune?

Mr. DUPREE. We had this discussion on the way over here. We are probably going to say much of the same thing. But number one is partnership. You got to start off working together. We all have the same goals. We got to figure out how we are going to get there, and we have to do that together and not separately.

And then the other thing is flexibility because after you have the partnership, then you have the authority to move. You have the authority to act. And I think that is what we do not have, is the authority to act. We have to act based on what we are told instead of a partnership based on a shared commitment to do something, to go forward on.

And then the affordability issue—if you get those first two, then you work on the affordability issue and how do we make it happen? Because if I cannot pay for it, I cannot make it happen.

Mr. MAST. You all represent unique and diverse communities that all have very specific issues.

Yes, sir?

Mr. PORTUNE. Mr. Chairman, thank you. First, act, and by that I mean codify. Adopt integrated planning as a measure to ensure that this approach with flexibility and partnership is the way in which we are approaching these issues with respect to Clean Water Act compliance across all programs to give local communities the flexibility that they do need.

Reduce reliance on the median household income. I think we all agree that this cookie cutter approach does not work. Each of our

counties or cities or municipalities are unique. There has got to be more of a deeper dive with respect to what are the factors that are affecting local communities.

One-fourth of counties have not yet recovered from the recession. So that is an important issue that must be greatly understood.

Third, focus on water quality as the goal as opposed to just a numbers game with respect to reducing the number of CSOs and SSOs and that sort of thing. At the end of the day, there might be, in our community or others, 10 CSOs that still need to be eliminated to the cost of potentially $100 million. But the impact on clean water is negligible, when there may be a much better 21st-century science approach toward getting that last measure of clean water that needs to be done.

Utilize pilot projects to help build the data on how green infrastructure, adaptive management, watershed management does work and work effectively in reducing costs but providing greater impact on clean water.

And then last, with respect to the civil penalties approach, and this is not backsliding at all, if there are local communities that are recalcitrant or refusing to comply, that is one thing. But the main reason why there is not full Clean Water Act compliance is just the lack of money. And civil penalties do not help that situation at all.

Take the money from fines and penalties and actually put it back into what we are all trying to do, which are programs and initiatives that will improve clean water.

Mr. MAST. Great. And I just have a couple more quick cleanup questions for you, one that I want you to think about real quick, and I am going to ask you something specific before that. But it is a chance for you to send a message. I like to give flexibility, so you can give this in terms of a letter grade, A to F, or 1 through 10. I do not care how you answer it.

But think about for a second, what grade would you give the EPA in implementing the integrated planning policy? And while you think about that as our mayors a minute, I wanted to ask you this.

You have all spoken a good deal about the green infrastructure approaches that exist out there. It is one thing to learn about them in academia and to talk about them. I was wondering if you could give any of the specifics about the ones that you have in place being used as we speak, the measurable savings that you have seen as a result of using porous roadways or floating wetlands or oyster beds or rain gardens or water farming, whatever that may be. What specific ones do any of you have in place as we speak that you are seeing the payout on.

Mr. BUTTIGIEG. So for us, permeable concrete is a good example. You might not even notice unless you look closely, but you look closely at the parking spaces that we are putting in, some new streetscapes, and you can see how it drinks up the water instead of sending it into the sewer.

We are doing downspout disconnect——

Mr. MAST. Is that just on city properties or——

Mr. BUTTIGIEG. Yes. We are doing it on our roads, and in some neighborhoods we have the opportunity to do that, too. But of

course, we are encouraging the private sector to do that because parking lots are such a big part of where the runoff comes from.

A downspout disconnect program: A lot of people have downspouts that go straight into the system. And so we are making it easier for residents to have those go into the yard where the soil will drink up some of it.

Rain gardens: Making sure that we have ways of collecting the water. We are even contemplating——

Mr. MAST. Do you have a number, though, on how many gallons you are taking offline compared to what goes into the system? I am just trying to get a few specifics.

Mr. BUTTIGIEG. Not handy, but we would be happy to get that back to you.

Mr. MAST. Great. Do any of you other mayors have any of the specifics that you would want to offer up real quick?

Mr. DUPREE. I do not have any specifics on any of those. We are working so hard just trying to take care of the things that we already have consent decrees on right now, to be innovative is very difficult.

Mr. MAST. OK.

Mr. PORTUNE. Mr. Chairman, thank you for calling me a mayor. I am actually a county commissioner.

Mr. MAST. I apologize.

Mr. PORTUNE. But just for the record, I appreciate it, and our mayors would actually take that as a compliment, as do I.

Mr. MAST. You see, you are fully honorable.

Mr. PORTUNE. I am grateful for that.

A couple of examples in Cincinnati that I would refer you to. One is the Lower Mill Creek partial remedy, Lick Run improvement. I cannot tell you the difference in the gallons of water because actually, we are accomplishing about the same thing. The importance, though, is the reduction in cost.

We were obligated, unless we came up with a green approach that was approved by EPA, to build a huge, deep tunnel to the cost of about $500 million. We instead got approval to use a green approach that included daylighting streams, introducing new foliage and green grass where there was none before to absorb the water, permeable pavers, and things like that.

The total cost again was less than half of the cost of the other, and in the process, it also has allowed us the opportunity to begin the improvement of an urban neighborhood and to create jobs from that.

The second example is the Cincinnati Zoo, that calls itself the greenest zoo in all of America. And so I will boldly go forward and say that they are. But they are using permeable surfaces in all of their parking lots at the zoo. And what that has done is allowed the zoo to meet all of its nonpotable water needs throughout the entire zoo, saving a tremendous amount of money and operational cost.

Mr. MAST. I have already gone well over my time and I still have one more cleanup question for you. So I apologize. But I appreciate it. I think it is a conversation we had to have more, especially if we are going to have folks move in that direction.

They need to see measurable apples to apples comparisons about what they could do with an equal flow of water, meeting an equal nutrient load in terms of what is going into the system, and a dollars-to-dollars comparison, in my opinion.

Just one last cleanup question, give you an opportunity to wrap up with whatever you might have. But if we are really going to achieve a paradigm shift where local and State and Federal officials can exercise a practical leadership and work together to determine what our environmental and spending priorities should be, what would you do? Anything else you want to offer on that?

Mr. DUPREE. The only thing I would offer, Congressman, is that water quality is so important. And when you look at the affordability issues and what they talk about, they do not include water quality. It is only CSOs and SSOs. And that is because the cost of water is so high. And so there has got to be a greater focus on water quality and not just on SSOs and CSOs.

And I will tell the only other question that you asked about, green infrastructure, we have a barrel retention basin at our new police department I forgot about. So we do have that plus the Little Gordon's Creek we are working on right now for green infrastructure.

Mr. PORTUNE. Mr. Chairman, I would agree with respect to Mayor DuPree that the goal of this is clean water. And so the focus needs to be on what can we do using innovative means and approaches, collaborative approaches, that are going to allow us to clean up the waterways of America in ways that are efficient, effective, and affordable?

So if the goal is clean water, that has got to be what the focus is. This cannot just simply be a numbers game in the number of CSOs that are being reduced.

And I do have a grade for EPA's implementation, if you wanted that.

Mr. MAST. I would love to hear it.

Mr. PORTUNE. I would give EPA a C-minus with respect to their approach. They have taken steps in bits and spurts. Lately there has not been as much. Clearly I credit EPA for introducing integrated planning back in 2002, but it has just simply not been implemented across the board the way in which it could be, and there is a distinct difference between the way in which the regions approach it compared to headquarters here in Washington, DC.

So credit for having started. A passing grade, but not where they should be.

Mr. MAST. Any other grades you want to offer before I close this?

Mr. BUTTIGIEG. Maybe Incomplete. Again, that idea of integrated planning is welcome, but it hasn't been completely implemented, and it seems not always to have penetrated into the regional offices even if it's embraced here in DC.

Mr. DUPREE. I will give it a B just for the attempt.

Mr. LEVINE. If I may, Mr. Chair?

Mr. MAST. Very good. Well, yes, by all means. You want to offer up a letter? Give me a letter.

Mr. LEVINE. Yes.

Mr. MAST. And aside from that letter, I am going to close it.

Mr. LEVINE. I am going to revert back to before letter grades in first grade, second grade, grade school. I am going to say Needs Improvement. But I want to say that that's really what we ought to be grading, is collectively grading EPA, Congress, local governments, local utilities. As people have said, there's partnership that is needed. There are many legs of the stool. EPA cannot do it alone.

Mr. MAST. Needs Improvement. We will put it in the record.

If there are no further questions, I would like to thank each of you as our witnesses for being here this morning. We really appreciate your time. This has been incredibly informative for me, I know for everybody else as well on the dais.

If no other Members have anything else to add, the committee stands adjourned.

[Whereupon, at 12:13 p.m., the subcommittee was adjourned.]

Written Testimony of Mayor Pete Buttigieg
House Transportation and Infrastructure Committee
Subcommittee on Water Resources & Environment
May 18, 2017

Introductions

Good morning Chairman Graves, Ranking Member Napolitano, and members of the Committee. I thank you for this invitation to give my and the Conference of Mayors' perspective on water and wastewater issues in the United States.

My name is Pete Buttigieg and I have been the Mayor of South Bend, Indiana since 2012.

Let me start by commending this committee for holding this hearing on this important issue. This hearing, and the proposed bills, acknowledge that as a nation, we need to approach our water and wastewater infrastructure and compliance issues in a much more practical and sustainable manner. Our communities and more importantly, our residents, do not have unlimited resources to bear the burden of implementing every rule and regulation without support or without regard to context. Today, we are faced with a myriad of pressing and complex public health and environmental challenges that require the careful evaluation of each public dollar spent against competing causes. As we are fond of saying at the Conference of Mayors, "If everything is a priority, then nothing is a priority."

It is crucial that we renew the federal-state-city partnership to identify and invest in environmental and public health infrastructure. Attached to my testimony is a letter signed by the conference of Mayors, National League of Cities, and National Association of Counties that encourages all members of Congress to support integrated planning and smart solutions to environmental problems.

THE SOUTH BEND STORY

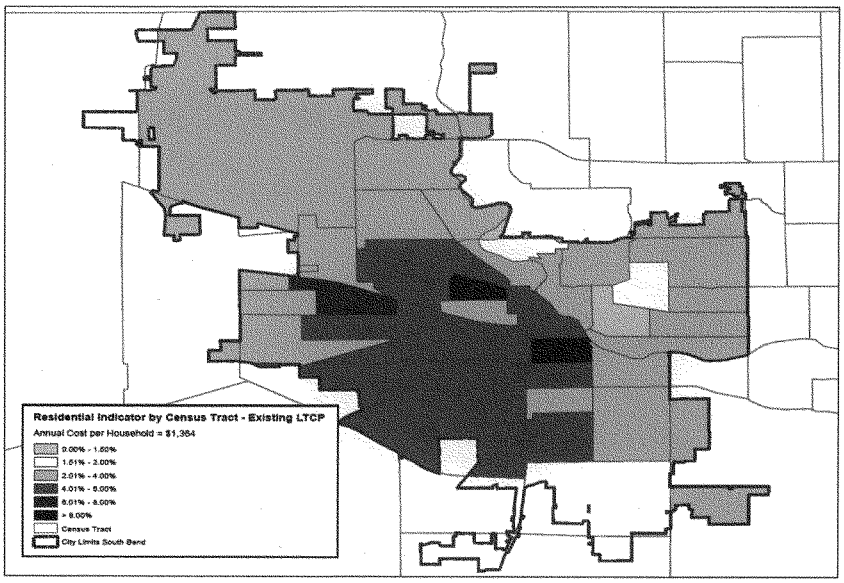
I would like to tell you about the City of South Bend and the problems we face with regard to water and wastewater infrastructure, as well as the solutions that we are employing to more accurately and efficiently manage environmental conditions.

We are a medium sized postindustrial City of 101,000. I am pleased to report we are experiencing the fastest pace of residential growth and investment in many years, but we are still economically challenged. Our median household income is 35% below that of the rest of the nation. Unemployment is 5.6% and over 20% of our residents make less than $15,000 annually.

Like many Midwestern communities, we have a combined sewer system. Rebuilding the system is our greatest annual clean water-related expenditure.

Since late 2011 we have had to comply with a federally enforced Consent Decree that prescribes, in a long-term control plan, how the Environmental Protection Agency, Department of Justice, and Indiana Department of Environmental Management, or IDEM, require South Bend to modify our combined sewer system and reduce overflows. While we enthusiastically support the goal of reducing overflows into our river, the current plan is enormously expensive. Our latest financial evaluation tells us that to build the plan as prescribed will cost $861 million, without financing costs. When financing costs are included, the plan's cost approaches one billion dollars—ten thousand dollars for every man, woman, and child in our city. In accordance with the EPA's financial capability assessment, we have calculated that the proposed project cost represents a Residential Indicator of 3.69%. That means that 3.69% of a median South Bend household's income, $34,600, will be going to pay for this long-term control plan. This is a significant burden for our residents. One out of every five households will have to pay 10% or more of its household income just toward their wastewater bill and one of every ten households will pay at least 14% of its income toward their wastewater bill. According to the EPA policy anything above 2% is considered a high burden. These costs are unsustainable and could cripple our economically and racially diverse community, making sewer bills unaffordable for low-income residents and reducing our competitiveness for commercial and industrial users. This has with long-lasting ramifications for economic development and social mobility, a set of harms that I believe were never intended by the Clean Water Act.

This graphic shows the financial burden the project has on our entire community and the disproportionate burden that it places on specific census tracts with disadvantaged neighborhoods.



Our 2011 consent decree has two phases. We have completed Phase 1 at a cost of almost $150 million. This, in combination with a City-pioneered Smart Sewer initiative, has already reduced combined sewer overflow to the river by 75%, from over 2 billion gallons annually to less than 500 million.

We are proud of the achievement of reducing overflows for cleaner water. But now we face the daunting task of implementing Phase 2 of the Consent Decree projects, which have a total price tag of $713 million to tackle the remaining 25% of the overflow. Phase 2 is essentially nine large pieces of grey infrastructure - tanks and tunnels. The plan is not what we would call an 'Integrated Plan' nor does it contain Green Stormwater Infrastructure. It may have seemed sensible in 2001, but it is more expensive and less effective than originally envisioned, based on what we now know. Most critically, not only can our residents not afford this phase as currently decreed, but the plan required will not meet its own level of control objectives.

South Bend made major investments in wastewater technology as an early adopter of the innovative 'smart sewer' approach. In 2008, the City installed 150 depth and flow meters in our combined sewer network. Then in 2011 we added 'Real Time Control', a series of intelligent gates and valves that maximized system capacity and prioritized access to the waste-water treatment plant for CSO basins that would otherwise have overflowed. This smart sewer network, and to an extent the Phase 1 long-term control plan projects, are the reasons for our massive early CSO reduction success. It also means we now have years of real-world data to better inform us in CSO

management, data which did not exist when the consent decree was imposed. We want to do more of what has clearly worked for us, and to that end my administration has used this data to develop a smarter and greener plan that when compared to the existing plan will decrease the number of overflows, vastly increase water quality in our St. Joseph River and would impose a residential indicator figure of 2.04% (versus 3.69%). This new Integrated Plan will take Phase 2 costs from $713 million to $200 million—but only if we are allowed to implement it.

What communities such as ours need most of all is flexibility. Rigid long-term control plans do not evolve with technology, such as smart sewers, and they do not focus on an integrated approach. The Clean Water Act is much more than a CSO policy, it is a holistic approach to protecting the waters of the United States' streams, rivers, lakes and aquifers. Therefore an 'Integrated Plan' is an essential tool to tackling all water quality issues. Integrated planning means using a sequence and approach that makes sense holistically. Local communities determine their water quality issues, from lead pipes to brownfield remediation, from stormwater to combined sewage, and prioritize them with a hierarchy that achieves the earliest and most significant public health and environmental benefits. A plan in this model could be truly considered 'Integrated' and would represent a more impactful and efficient approach to achieving the goals of the Clean Water Act.

We are in the process of Integrated Planning through the development of smarter, more sustainable solutions to intercept stormwater runoff with green infrastructure. This enables us to reduce the financial burden of the cost of mandated CSO control systems. In conjunction with newly obtained calibrated flow data, which is possible only due to our pathbreaking investment in smart sewers, we plan to use rain gardens, permeable pavements, bio-swales, and other methods to keep stormwater from entering our combined sewer system and thus reduce the need for expensive, large collection system construction.

The United States Conference of Mayors (USCM)

I have attended many conferences and meetings with the USCM and can say with confidence that while every city has a unique story to tell, they also share much in common. We face high costs and impossibly short time schedules to comply with aggressive controls of combined and sanitary sewer overflows, as well as stormwater regulations. The USCM has brought forward a series of mayors over the last five years to testify before Congressional Committees on behalf of Integrated Planning and our need for EPA to promote flexibility when implementing the Clean Water Act.

Our message to Congress is that renewing the public water infrastructure, while simultaneously delivering uninterrupted services including safe and adequate water, is becoming unaffordable. Unfunded mandates related to sewer and stormwater are both expensive and not well targeted towards the highest local environmental or public health concerns of a city. Local governments are stuck on an unsustainable financial treadmill when it comes to providing water and wastewater services. Decisions made by Congress and the Administration to eliminate or reduce financial assistance without reducing unwarranted and costly mandates has placed a severe financial burden on our nation's cities and our citizens.

- The net effect of mandates and infrastructure investment (both capital and operations) puts cities in increasingly higher long term debt with accompanying rate hikes that have the effect of raising basic service rates to levels that are unaffordable to a growing percentage of the 80% of Americans served by these systems.

Some Solutions

Amend the Clean Water Act to Remove Restrictions and to Fully Allow Use of Effective Integrated Planning Through Permitting Processes

Integrated Planning is designed to allow cities to develop comprehensive plans for their water, sewer, and stormwater needs, and establish a plan of investment over time to reach water quality goals. EPA's 2012 Policy on Integrated Planning laid the groundwork for this approach, but was never fully implemented due to CWA restrictions and the unwillingness of EPA/DOJ to allow full use of Integrated Planning. My experience as Mayor has demonstrated that, cities should be able to sequence investments based on local priorities, taking into account the issues that local government has identified to be of greatest environmental and/or public health significance. And, cities and state and federal agencies should be acutely aware of the importance of affordability to Americans served by public sewer/wastewater systems.

- The Mayors believe that future investments should be prioritized to first ensure the sustainability of existing public water infrastructure and associated public health, economic and environmental benefits.
- Additional improvements that will achieve additional benefits should be prioritized second.
- Investments that do not have commensurate public health, economic and environmental benefits do not belong on the priority list.
- And we urge the adoption of a new metric of affordability, ending the current, simplistic use of Median Household Income (MHI) as the critical metric for determining investment level. MHI has proven to be a blunt instrument, and can put 50% of households on an unfair and burdensome financial impact assessment because it is not calibrated to account for the impact on our poorest residents.

State/EPA Enforcement to Achieve Long Term Control of Stormwater through Permits

Cities need time to reach the ambitious goals of the Clean Water Act (CWA). Local elected leaders have a documented record of directing public investments to clean and protect our lakes and streams, but we can't get there if that means bankrupting our most vulnerable citizens with plans that overemphasize energy-intensive gray infrastructure and neglect the potential of Green Infrastructure. Cities and their Mayors urge Congress to create a path to reach long term goals through the existing permit process rather than by way of consent decrees. Longer permit terms with compliance schedules, coupled with regulatory oversight and a commitment by cities to reasonable progress, are preferable to a consent-decree model which forces an adversarial relationship involving lawyers, judges and penalties, and which imposes rigid restrictions that prevent flexible solutions as technology and priorities evolve. This work is best performed by city

planners, environmental experts, engineers and scientists who can collaborate in a permitting process to most promptly achieve the goals of the CWA. For example, the City of South Bend is working with the State of Indiana to develop a pragmatic and practical long-term control plan using smart sewers and green infrastructure to improve water quality while saving hundreds of millions of dollars over the consent decree approach. Such efforts must be made possible for all cities.

Renew Congressional Support for Exercising Flexibility in Existing Clean Water Law

The current CWA allows States, with EPA oversight, to use some flexibility to achieve water quality goals. For example, the CWA allows EPA flexibility in water body attainment designations. EPA also can grant variances where compliance with requirements have overly burdensome impacts on permittees. But there are also unnecessary restrictions in the CWA that could be eliminated – allowing cities the opportunity to use the full spectrum of integrated planning to achieve the CWA goals of fishable and swimmable streams, but recognizing the funding and staffing limitations that can impede and frustrate progress.

National Pollutant Discharge Elimination System (NPDES) permits are the best vehicle to accomplish these goals, through a collaborative process that involves the representatives of the city and the State (who has been delegated CWA authority, with EPA oversight). By contrast, consent decrees negotiated by the DOJ impose unnecessary and unreasonable restrictions with the character of harsh penalties rather than of shared goals. One dramatic consent decree example is the Lima, OH case, where a river is required to be "fishable and swimmable" despite the fact that the river dries up in the summertime and reaches only four inches deep in the wintertime. No one will ever swim or fish there. Yet, the City is held to that standard of compliance and, as a result, a very costly investment that comes at the expense of other opportunities to benefit residents and the environment.

The Conference of Mayors would encourage the USDOJ/EPA to demonstrate that these types of designations are, in fact, achievable before requiring cities to spend public resources to the level of economic hardship, even if that requires reevaluating use attainability or allowing variances until a goal can be reasonably reached.

Assessing City Fines in Consent Decrees

Cities and mayors urge the elimination of civil penalties for local governments who develop an integrated plan and put good faith efforts and reasonable further progress into improving their water. Cities are not private entities where penalties impact our profit margin - civil penalties only hurt the residents, the customers, of our communities. The appropriate measure of DOJ/EPA success is environmental vitality, not the dollar total of assessed civil penalties. Eliminating civil penalties can help reduce costs for low-income citizens who spend a significant portion of their income on water and wastewater bills, and allow these monies to be more effectively spent on solutions. Penalties should be reserved only for those units which refuse to achieve progress; not for those which do their best to improve water quality, and best serve citizens, with limited resources.

An Example

A recent review by the USCM arrays the civil fines for 31 local sewer/wastewater utilities that have completed a consent decree with EPA. The fines range from minor (Troy, ID, $14,500 2014); to severe (Delaware County, PA $1,375,000, 2015), (see Appendix 3). City consent decrees can be accessed using the hyperlinks in Appendix 4. Because the EPA uses Median Household Income (MHI) to set expected compliance costs, those costs, as well as the civil fines, result in regressive and disproportionate impacts on low income households, but also penalize middle-class households. There is no accompanying EPA rationale for why limited local resources are best spent on fines and overly costly consent decrees.

The regressive financial impacts of fines and compliance costs are illustrated for Delaware County, PA, (see Appendix 5). Delaware County was assessed a $1.375 million civil penalty in addition to the $300 million in estimated cost to comply with the consent order. To illustrate the disproportionate impact on residents, the USCM made 2 assumptions: rates for residential customers are assumed to be uniform, therefore payment of the fine is spread uniformly over all income groups. The same uniform distribution of costs applies to paying over time for the long-term compliance plan. The financial impact table in Appendix 3 indicates that nearly 70% of the fine and the long-term plan compliance costs will be borne by households with under $100,000/year; 57% of the fine and plan costs will be borne by households making under $75,000 a year. The County MHI is $64,174. Households with income of greater than $100,000/year contribute only 30% of the costs. Merely saying that each household will only be responsible for $6.72 in fine payment share ignores the fact that EPA's federal mandate results in extracting $1.375 million, mostly from low and middle class households.

Managing stormwater and sewage is a fundamental public health and public safety responsibility. Congress directed EPA to establish guidance on how cities should manage storm and sewer flows. The direction the EPA took with its 1997 Guidance on affordability occurred in the context of the federal/Congressional retreat from funding. Even without funding, EPA has a choice to see itself as a partner and co-regulator with local government, or see itself as an enforcer. We urge the recalibration of the EPA/DOJ-local government relationship to better protect our environmental assets and serve city residents.

Conclusion

I wish to thank the members of this Committee for this opportunity to address you. I strongly encourage this Committee to move forward on legislation that will help reestablish the local-state-federal partnership to help better address vital water infrastructure and environmental sustainability.

APPENDIX 1

City	State	Civil Penalties	Year
Atlanta	GA	$700,000.00	1998
Troy	ID	$14,500.00	2014
Chicago	IL	$675,000.00	2014
Anderson	IN	$250,000.00	2001
Elkhart	IN	$87,000.00	2011
Evansville	IN	$490,000.00	2011
Fort Wayne	IN	$538,380.00	2007
Hammond	IN	$225,000.00	1999
Mishawaka	IN	$28,000.00	2014
South Bend	IN	$88,200.00	2011
Indianapolis	IN	$1,177,800.00	2006
Fitchburg	MA	$141,000.00	2012
Chicopee	MA	$115,000.00	2006
Lawrence	MA	$254,000.00	2006
Kansas City	MO	$600,000.00	2010
St Louis	MO	$1,200,000.00	2013
Perth Amboy	NJ	$17,000.00	2012
Jersey	NJ	$375,000.00	2011
Oswego	NY	$99,000.00	2010
Akron	OH	$500,000.00	2009
Lima	OH	$49,000.00	2014
NE Ohio	OH	$1,200,000.00	2010
Toledo	OH	$60,000.00	2002
Euclid	OH	$150,000.00	2011
Delaware	PA	$1,375,000.00	2015

Pittsburg (Allegheny)	PA	$1,200,000.00	2008
Scranton	PA	$340,000.00	2013
Williamsport	PA	$320,000.00	2010
Chattanooga	TN	$476,400.00	2013
Seattle	WA	$350.000.00	2013
King County	WA	$400,000.00	2013

APPENDIX 2

Water Penalties and Project Costs

Akron, 11/13/2009
Several projects, $500,000 civil penalties in total
https://www.epa.gov/sites/production/files/documents/cityofakron-cd.pdf

Anderson 2001
$250,000 civil penalties, stipulated penalties for non-compliance
https://www.epa.gov/sites/production/files/2016-02/documents/anderson-cd.pdf

Elkhart 09/06/2011
Projects before 2029, $87,000 civil penalties in total
https://www.epa.gov/sites/production/files/2016-02/documents/elkhart-cd.pdf

Evansville
Project costs 500 million, $490,000 penalties
https://yosemite.epa.gov/opa/admpress.nsf/e51aa292bac25b0b85257359003d925f/b80b93f22d924e4d85257814006e453e!OpenDocument\

Fitchburg 10/02/2012
$141,000 civil penalties in total
https://www.epa.gov/sites/production/files/documents/cityoffitchburg-cd.pdf

Ft. Wayne IN Superfund site

Hammond Sanitary District IN 1999
$225,000 civil penalties in total, contribution of 2 million to a project, others
https://www.epa.gov/sites/production/files/2016-02/documents/hsd-cd.pdf

Kansas City MO

Lima OH 11/19/2014
$49,000 plus interest civil penalties in total
https://www.epa.gov/sites/production/files/2014-12/documents/cityoflima-cd.pdf

Nashua NH 12/26/2005 – amendment in 2009
The project required in 2009 costs $21 million
https://www.epa.gov/enforcement/city-nashua-new-hampshire-combined-sewer-overflow-clean-water-act-settlement

Newport RI Newport bay toxic control

Omaha NE ☒
$1,116,000 Grant for sewer-2011

Mishawaka IN 2014
$28,000 civil penalties in total
https://www.epa.gov/sites/production/files/2014-05/documents/mishawaka-cd.pdf

New Bedford MA superfund site for two companies
https://www.epa.gov/enforcement/reference-news-release-avx-corp-pay-366-million-settlement

Northeast Ohio regional sewer district 2010
$1,200,000 civil penalties in total
total cost of implementing $2,996,000,000, with additional cost $2,251,000,000
https://www.epa.gov/sites/production/files/2013-09/documents/neorsd-cd.pdf

Philadelphia, PA 02/11/2015
82 million project, 5 years to complete.
https://www.epa.gov/newsreleases/feds-state-settle-clean-water-violations-harrisburg-and-capital-region-water

Delaware 08/17/2015
200 million project, 1.375 million penalties
https://www.epa.gov/newsreleases/pennsylvania-water-utility-reduce-sewage-discharges-delaware-river-and-local-creeks

City of Troy WWTP, March 2014
$14,500 penalties,
https://yosemite.epa.gov/opa/admpress.nsf/e51aa292bac25b0b85257359003d925f/6e011794111c318585257ced006d615c!OpenDocument

Oswego 03/29/2010
$99,000 civil penalties in total
https://www.epa.gov/sites/production/files/documents/cityofoswego-cd.pdf

Kansas city, MO 05/18/2010
$600,000 penalties to the UST, Project costs $2.5 billion over 25 years
https://www.epa.gov/enforcement/kansas-city-missouri-clean-water-act-settlement#civil

South Bend 12/29/2011
$88,200 civil penalties in total, the project costs $509.5 million
https://www.epa.gov/sites/production/files/documents/cityofsouthbend-cd.pdf

St Louis. MO. 07/05/2013
$1,200,000 civil penalties
https://www.epa.gov/sites/production/files/2013-09/documents/stlouis-cd.pdf

Terre Haute IN one consent decree for companies

Indianapolis 2006
$1,177,800 civil penalties
Two amendment in 2009 and 2010 but nothing changed about the penalties
https://www.epa.gov/sites/production/files/2013-09/documents/indy0610-cd.pdf

Chicopee, MA 2006
$115,000 fines
https://yosemite.epa.gov/opa/admpress.nsf/b853d6fe004acebf852572a000656840/5e75a7374f01d9cd852571b90052f75d!OpenDocument

Greater Lawrence sanitary district, MA 10/31/2006
$254,000 Fine, $18 million investment on projects
https://yosemite.epa.gov/opa/admpress.nsf/dcee126c0635d65f852571fc006e9e20/3818d7489a41bba585257218006d3b08!OpenDocument

Perth Amboy, NJ 09/28/2012
$17,000 civil penalties
https://www.epa.gov/enforcement/city-perth-amboy-settlement#penalty

Jersey city, NJ, 09/29/2011
$375,000 civil penalties,
https://www.epa.gov/enforcement/jersey-city-municipal-utilities-authority-jcmua-settlement#penalty

Allegheny County Sanitary Authority (ALCOSAN), Pittsburg, PA 01/24/2008
$1.2 million penalties, 3 million project
https://www.epa.gov/enforcement/allegheny-county-sanitary-authority-alcosan-settlement

Washington, DC, 10/10/2003

Scranton, PA 01/31/2013
$340,000 civil penalties
https://www.epa.gov/enforcement/scranton-sewer-authority-scranton-pennsylvania-settlement#penalty

Williamsport, PA, 08/05/2010
$320,000 penalties
https://www.epa.gov/enforcement/williamsport-clean-water-act-settlement

Atlanta, GA, 09/24/1998
$700,000 penalties
https://www.epa.gov/enforcement/city-atlanta-clean-water-act-settlement

Louisville and Jefferson County Metropolitan 2005
$500 million project
https://www.epa.gov/enforcement/louisville-and-jefferson-county-metropolitan-sewer-district-settlement

Metropolitan Government of Nashville and Davidson County (Metro)
$700 million project
https://www.epa.gov/enforcement/metropolitan-government-nashville-and-davidson-county-tenn-agree-extensive-sewer-system

Chattanooga. TN, 04/24/2013
$476,400 civil penalties
https://www.epa.gov/enforcement/city-chattanooga-tennessee-settlement#civil

Toledo, OH 12/16/2002
$500,000 civil penalties,
https://www.epa.gov/sites/production/files/2013-09/documents/toledo-cd.pdf

Youngstown, OH, 05/09/2002
$60,000 civil penalties
https://www.epa.gov/sites/production/files/2013-09/documents/youngstown-cd.pdf

Chicago, IL, 01/06/2014
$675,000 civil penalties
https://www.epa.gov/enforcement/metropolitan-water-reclamation-district-greater-chicago-settlement#civil

Euclid, OH, 10/14/2011
$150,000 civil penalties
https://www.epa.gov/enforcement/city-euclid-ohio-combined-and-sanitary-sewer-overflow-clean-water-act-settlement

Seattle/ King county, WA 07/03/2013
King county penalties $400,000, Seattle penalties $350,000.
https://www.epa.gov/enforcement/seattle-washington-and-king-county-washington-settlement#penalties

Appendix 3

Cost Distribution Estimates for Delaware County Consent Decree Civil Penalty and Long-Term Compliance Cost

Delaware County PA Fine						Long-Term Control Plan
1,375,000.00	Number	Cost	Cumulative	Cumulative		Estimated Cost
MHI (dollars)	of	Per	Cost	Number	%	$300,000,000
64,174	Households	Household	by Income	of	of	by 2023
Total Households	204,571	$6.72/HH	Group	Households	Households	$1,466.48/HH
Less than $10,000	11,191	75,203.52	75,203.52	11,191	5.47	16,411,377.68
$10,000 to $14,999	8,058	54,149.76	129,353.28	19,249	3.94	11,816,895.84
$15,000 to $24,999	17,880	120,153.60	249,506.88	37,129	8.74	26,220,662.40
$25,000 to $34,999	18,556	124,696.32	374,203.20	55,685	9.07	27,212,002.88
$35,000 to $49,999	26,009	174,780.48	548,983.68	81,694	12.71	38,141,678.32
$50,000 to $74,999	34,558	232,229.76	781,213.44	116,252	16.89	50,678,615.84
$75,000 to $99,999	25,884	173,940.48	955,153.92	142,136	12.65	37,958,368.32
$100,000 to $149,999	32,467	218,178.24	1,173,332.16	174,603	15.87	47,612,206.16
$150,000 to $199,999	14,555	97,809.60	1,271,141.76	189,158	7.11	21,344,616.40
$200,000 or more	15,413	103,575.36	1,374,717.12	204,571	7.53	22,602,856.24

March 22, 2017

The Honorable Bob Gibbs
U.S. House of Representatives
2446 Rayburn Office Building
Washington, DC 20515

The Honorable Steve Chabot
U.S. House of Representatives
2371 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Gibbs and Chabot:

On behalf of the nation's mayors, cities, and counties, we are writing to express our support for your bill the *Water Quality Improvement Act (H.R. 465)*, and we urge your colleagues to support it as well. The legislation would codify the U.S. Environmental Protection Agency's (EPA) Integrated Planning and Financial Capability policies as useful tools for local governments to comprehensively deal with wastewater and stormwater investments as well as unfunded mandates.

Local governments are at a crossroads. Cities and counties spend over $115 billion per year to provide safe and reliable water and sewer services and maintain a vast physical infrastructure of pipes, pumps and plants. While we thank Congress for providing $2 billion annually to the water and wastewater State Revolving Fund programs, these loans are not enough to cover the estimated costs to maintain and replace our aging infrastructure. Additionally, local governments, our residents, and businesses must spend additional resources to comply with numerous environment and non-environmental federal and state unfunded mandates, which further limits the money available for water infrastructure.

Furthermore, both the state and EPA's enforcement agencies increasingly regulate in a silo. While our cities and counties may be working to meet a multitude of standards in various water and wastewater requirements, the states and EPA often do not collaborate across the policy programs. This often create further, unnecessary unfunded mandates. However, the legislation would address many of these concerns by creating a policy shift that costs no federal money and creates some spending flexibility for our citizens.

Specifically, the bill would allow local governments to work with their state and EPA to prioritize investment in wet weather overflows and flooding collectively, rather than individually, by codifying various EPA memorandums on water tools and affordability. And the bill would allow consideration of other service costs including drinking water. Since our water and wastewater systems are paid for by the ratepayers, the bill will help reduce costs for a substantial number of our low-income citizens who spend a significant portion of their income on water and wastewater bills. The measure would also allow local governments who undertake integrated planning to incorporate green infrastructure

components into municipal stormwater, combined sewer overflow (CSO) and other water plans in a more cost effective way.

Thank you again for your leadership on this issue. On behalf of the nation's cities, counties and mayors, we thank you for your consideration of our request. If you have any questions, please contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; or Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,

Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors

Matthew D. Chase
Executive Director
National Association of Counties

Clarence E. Anthony
CEO and Executive Director
National League of Cities

cc: Members of the House

May 17, 2017

The Honorable Bob Latta
U.S. House of Representatives
2448 Rayburn Office Bldg.
Washington, DC 20515

The Honorable David Joyce
U.S. House of Representatives
1124 Longworth House Office Bldg.
Washington, DC 20515

The Honorable Grace Napolitano
U.S. House of Representatives
1610 Longworth House Office Bldg.
Washington, DC 20515

The Honorable Cheri Bustos
U.S. House of Representatives
1009 Longworth House Office Bldg.
Washington, DC 20515

The Honorable Lloyd Smucker
U.S. House of Representatives
516 Cannon House Office Bldg.
Washington, DC 20515

The Honorable Marcia Fudge
U.S. House of Representatives
2344 Rayburn House Office Bldg.
Washington, DC 20515

Dear Representatives Latta, Joyce, Napolitano, Bustos, Smucker, and Fudge:

On behalf of the nation's mayors, cities, and counties, we are writing to express our support for your bill the *Water Infrastructure Flexibility Act* (H.R. 2355). The legislation would codify the U.S. Environmental Protection Agency's (EPA) Integrated Planning and Financial Capability policies as useful tools for local governments to comprehensively deal with wastewater and stormwater investments as well as the growing costs of unfunded mandates. As Congress considers this legislation, we urge you and your colleagues to include additional provisions that would strengthen the bill.

Local governments are at a crossroads. Cities and counties spend over $115 billion per year to provide safe and reliable water and sewer services and maintain a vast physical infrastructure of pipes, pumps and plants. While we thank Congress for providing $2 billion annually to the water and wastewater State Revolving Fund programs, these loans are not enough to cover the estimated costs to maintain and replace our aging infrastructure. Additionally, local governments, our residents, and businesses must spend additional resources to comply with numerous environment and non-environmental federal and state unfunded mandates, which further limits the money available for water infrastructure.

Furthermore, both the state and EPA's regulatory agencies increasingly develop standards and requirements in silos. While our cities and counties may be working to meet a multitude of standards in various water and wastewater requirements, they also must address numerous other federal unfunded mandates simultaneously. The legislation would address some of these concerns by creating a policy shift that costs no federal money and creates additional flexibility for our communities.

Specifically, the bill would allow local governments to work with their state and EPA to prioritize investment in wet weather overflows and flooding collectively, rather than individually, by codifying various EPA memorandums on water tools and affordability. And the bill would allow consideration of other service costs including drinking water. Since our water and wastewater systems are paid for by the

ratepayers, the bill will help to stabilize rates and rate increases for a substantial number of our low-income citizens who spend a significant portion of their income on water and wastewater bills. The measure would also allow local governments who undertake integrated planning to incorporate green infrastructure components into municipal stormwater, combined sewer overflow (CSO) and other control plans in a more cost effective way. Importantly, we urge you and your colleagues to support additional provisions that stipulate that the effluent limitations within a compliance schedule in an integrated permit must be technically feasible and economically affordable. We also urge you to include a provision that will clearly define the threshold at which financial impacts on ratepayers trigger a consideration of flexibility to address those impacts.

Thank you again for your leadership on this issue. On behalf of the nation's cities, counties and mayors, we thank you for your consideration of our request. If you have any questions, please contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; or Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,

Tom Cochran	Matthew D. Chase	Clarence E. Anthony
CEO and Executive Director	Executive Director	CEO and Executive Director
The U.S. Conference of Mayors	National Association of Counties	National League of Cities

cc: Members of the House Transportation and Infrastructure Committee

Honorable Grace F. Napolitano, Ranking Member,
Subcommittee on Water Resources and Environment,
Question for the Record to Pete Buttigieg, Mayor of South Bend, Indiana
"Building a 21st-Century Infrastructure for America:
Improving Water Quality Through Integrated Planning"
May 18, 2017

Question from Hon. Grace F. Napolitano of California:
As we look at ways to modernize our clean water priorities, I would like your thoughts on extending Clean Water Act NPDES permit terms from five years to ten years (or beyond).

In my opinion, many wastewater infrastructure projects require up to 10 years or more of planning, design and construction. Many local agencies find that they must reapply for a permit while still in the process of constructing the upgrades necessary to comply with their prior permit, and even before a project is operational. Also, a project's lifecycle can be 30, 40 or even 50 years. Local agencies contend that a five year maximum permit term creates unnecessary permit backlogs and focuses scarce resources on permit renewals rather than today's most pressing water quality problems. Local agencies further contend that longer permit terms would align permitting practices with modern realities and also facilitate watershed-based approaches for stormwater quality improvements, such as are being used in my district.

Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?

Mayor Pete Buttigieg's Response:
Thank you for this opportunity to respond to your opinion and your question.

Your stated opinion that wastewater infrastructure projects require 10 or more years from start to operations is most likely based on the experience of your local agencies in your District. I would like to state that South Bend is experiencing its own difficult challenge in developing an overflow long term control plan that does not bankrupt our most vulnerable residents; and that cities in your District will face the same challenge in developing affordable plans to control stormwater and TMDLs.

My experience with the consent decree process is that it is unnecessarily costly, cumbersome and lengthy. I agree with the collective opinions of mayors I have heard from who have experience with the storm and sewer overflow consent decrees: they lock cities into approaches and technologies that are inflexible. Longer permit terms are necessary to accomplish long term water quality goals, but a longer permit term alone is not sufficient to achieve those goals. Congress would do a service to the nation's cities by considering not only longer permit terms, but also additional tools (contained in HR 465) to improve water quality standards in a sustainable and cost-effective manner. We urge Congress to define triggers for the use of Integrated Planning that includes use attainability, technically feasible standards and requirements, and financial capability of households and their local governments. These are imperative if we are to figure out a sustainable way of solving our Clean Water Act issues.

Honorable Grace F. Napolitano, Ranking Member,
Subcommittee on Water Resources and Environment,
Question for the Record to Pete Buttigieg, Mayor of South Bend, Indiana
"Building a 21st-Century Infrastructure for America:
Improving Water Quality Through Integrated Planning"
May 18, 2017

Should Congress consider the economic and water quality benefits of longer permit terms?

Committee consideration of the water quality benefits of longer permit terms should not unduly delay policy reform. While American rivers are generally improving in water quality levels because of the NPDES program, cities still face mostly unachievable water quality standards because non-point sources outside our local jurisdictions continue to degrade the receiving water bodies. An engineering rule of thumb is you can mitigate nearly 90% of pollution with your first investment, but the most difficult last 10% of mitigation often costs greater than half of city investments. Likewise, the current approach by EPA is to force cities to bear the highest cost (which are passed on to residents and ratepayers) for treating their own effluent to offset water quality degradation from non-regulated polluters.

The Subcommittee has, over the last several years, conducted a number of hearings regarding local government's request to codify Integrated Planning and Permitting in the context of the Clean Water Act. The oversight hearing docket contains testimony concerning the disparate fiscal impact of storm and sewer overflow consent decrees on below median income households. The fact in my community is that every household will spend $1300 per year for the next 15 years for a total of $19,500, just for their wastewater bill.

Local governments need other tools, in addition to longer permit terms, to help address water quality issues in an economically sustainable way.

NATIONAL LEAGUE OF CITIES
CITIES STRONG TOGETHER

Statement of

The Honorable Johnny DuPree, Ph.D.
Mayor, Hattiesburg, Mississippi

On behalf of the National League of Cities

Before the House Transportation and Infrastructure Committee,
Subcommittee on Water Resources and Environment

"Building 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning"

May 18, 2017

Good morning, Chairman Graves, Ranking Member Napolitano and Members of the Subcommittee. I am Johnny DuPree, Mayor of Hattiesburg, Mississippi. I am here today on behalf of the National League of Cities (NLC), the oldest and largest organization representing cities and towns across America. NLC represents 19,000 cities and towns of all sizes across the country. I appreciate the opportunity to be with you during Infrastructure Week to highlight the importance of investing in our nation's infrastructure and also to share our perspective and lend our support to two key policy frameworks that can provide local governments needed flexibility to make smart investments to protect water quality.

We applaud the U.S. Environmental Protection Agency (EPA) for partnering with NLC, the National Association of Counties and the U.S. Conference of Mayors in 2011-2012 to develop the *Integrated Municipal Stormwater and Wastewater Planning Approach* framework ("Integrated Planning Framework"). Building on that framework, we thank the Agency for partnering with our three organizations in 2012-2014 to develop the *Financial Capability Assessment Framework for Municipal Clean Water Act Requirements* ("Financial Capability Framework").

Taken together, these two policy frameworks demonstrate an awareness of the challenges local governments face in meeting Clean Water Act (CWA) requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility. With regard to affordability, flexibility, and the use of the permitting process within the integrated planning framework, we can minimize these conflicts and pursue the best solutions for the environment and our nation's communities, residents and businesses. Additionally, with the consideration of information, such as socio-economic factors, in determining the financial capability of a community when developing compliance schedules for municipal projects necessary to meet

CWA obligations, communities have the opportunity to address the particularly high financial burden that water rates have on low- and fixed-income residents.

While the Integrated Planning Framework and the Financial Capability Framework have been positive steps by EPA to address the high costs of meeting CWA regulatory requirements, there is more work to be done to ensure that these policy frameworks are useful tools for our communities and are implementable in communities across the country. I will discuss some ways of improving both frameworks within the context of the challenges and opportunities that we are facing in Hattiesburg in meeting CWA requirements, upgrading our aging infrastructure and protecting our water resources.

As you will hear from me today, cities have come a long way in tackling environmental issues, but we have also been burdened by unfunded mandates associated with these actions and others. As city budgets struggle to recover from the Great Recession, many of us are making tough choices about the services and maintenance that we can afford and in some instances taking actions to borrow and finance funds to addresses critical needs. Moreover, proposed federal budget cuts to critical programs would further reduce our ability to meet the everyday needs of our community, as well as add to the burden that unfunded mandates have on our city. This is not a sustainable situation and we urge Congress to reject the proposed cuts put forth by the Trump Administration.

Economic Benefits of Investing in Water Infrastructure

We as city leaders know that if we do not take care of our water resources, we will undermine the economic underpinnings of our cities, states and nation. The availability of clean water is the backbone of a modern society and a livable community, and the nation's water infrastructure systems are assets that support this by protecting public health, as well as the nation's precious water resources. To the extent that America's water infrastructure is properly maintained and can adequately meet the needs of our communities, it will help ensure the long-term vitality of our communities.

Despite the economic competitive advantage that the network of infrastructure in America's cities provides, our nation's investments have not kept pace with the needs of our communities in replacing and maintaining infrastructure that in some cases was built more than a century ago. America can no longer afford the cost of inaction.

This year, a study by the American Society of Civil Engineers (ASCE) estimates that there is a $2 trillion infrastructure needs gap in the U.S. This infrastructure deficit costs the average American family $3,400 annually. Specifically, ASCE estimates that the needed investments for water infrastructure are $82 billion per year over the next 10 years to meet projected capital needs.[1]

Make no mistake – cities are already paying their fair share of infrastructure investment. Local governments invest $1.7 trillion dollars annually on services such as transportation, public safety

[1] American Society of Civil Engineers, *2017 Infrastructure Report Card,* available at: http://www.infrastructurereportcard.org/

and education. In 2014, local governments invested over $115 billion in water and sewer infrastructure,[2] representing over 95 percent of all water and wastewater infrastructure investments.

Closing the infrastructure gap will provide a great economic benefit to our country and our communities. A recent study by the Value of Water Campaign found that closing the water infrastructure investment gap would result in over $220 billion in total annual economic activity to the country and would generate and sustain approximately 1.3 million jobs over the 10 year period.[3]

Hattiesburg: Affordability of Meeting Clean Water Act Requirements

Background: Water Infrastructure Challenges
The City of Hattiesburg was incorporated in 1884 with a population of 400 people. As a center of the lumber and railroad industries, we derived the nickname "The Hub City." In the 1950's and 1960's, with a growing economy, the city saw a large increase in population and industry. Companies like Hercules, which produced rosins, paper chemicals and agricultural insecticides, were at their productive peak. During the company's heyday, the plant was one of the city's biggest employers with over 1,400 workers. The housing market was quickly expanding, and as a result, public infrastructure was extended to meet the growing demands. Today, we are a city of approximately 48,000 residents, but on an average business day, we provide services for an estimated 120,000 people.

Positioned at the fork of the Leaf and Bouie Rivers and located within two different watersheds, the City of Hattiesburg is facing a number of water infrastructure and water quality challenges that must be addressed to ensure that our citizens have safe drinking water and a safe environment. This includes addressing sanitary sewer overflows, upgrading our wastewater treatment facility and modernizing our drinking water system, which I discuss below.

First, the City of Hattiesburg operates more than 300 miles of public sewers that convey about 13 million gallons per day of flow from residences and businesses to the city's two wastewater treatment plants. In evaluating the condition of the system, it is estimated that the construction projects to upgrade the wastewater collection system and reduce sanitary sewer overflows will cost in excess of $46 million. Moreover, adopting a Capacity, Management, Operation and Maintenance program could cost an additional $1 million per year. The city has begun implementation of some of these programs such as development of a Sanitary Sewer Mapping Program, Sewer Overflow Reporting Program, Fats, Oil and Grease Program, Gravity Sewer Inspection Program and Flow Monitoring Program, but we are likely facing a consent decree on our sanitary sewer overflow issues, which will come with additional costs.

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[2] U.S. Census Bureau, *2014 Annual Surveys of State and Local Government Finances*, available at: http://www.census.gov/govs/local/

[3] Value of Water Campaign, *Economic Benefits of Investing in Water Infrastructure,* available at: http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastructure_VOW_FINAL_pages.pdf

Second, large-scale improvements are also needed at our waste collection and treatment system. The City of Hattiesburg is currently in a 3rd amended agreed order with EPA and the Mississippi Department of Environmental Quality to ensure compliance with wastewater permits at the treatment facility known as the South Lagoon. The South Lagoon facility is a 400 acre, aerated lagoon facility that has been in operation since 1963. Initially, the agreed order required the city to construct an alternative treatment system. Thus far, the South Lagoon has been able to meet or exceed the required permit limits of the latest National Pollutant Discharge Elimination System (NPDES) permit. However, future tightening of these permit limits will make the South Lagoon system obsolete and will require the construction of a new treatment facility, which could cost taxpayers over $150 million.

The city is currently in negotiations to adopt a new project schedule which would extend the deadline for having a new wastewater treatment system. A new project schedule would provide our city and our residents more time to plan and save for the expenditures that will eventually be needed to address Hattiesburg's long-term wastewater treatment needs.

Finally, as with our wastewater collection system, a majority of the city's water treatment and distribution system is aging. The water treatment plants, which supply the city's drinking water, are in need of modernization. These upgrades are under design and are estimated to cost over $9 million. Additionally, the city has approximately 28 miles of undersized (less than 4 inches in diameter) water mains; water mains that require a fire hydrant must have a diameter of at least 6 inches. Moreover, the city has 25 miles of water mains that are constructed of asbestos cement piping that was part of a rural utility that was annexed by the City of Hattiesburg in the 1990s. The estimated cost for these water main replacements is approximately $50 million.

Affordability

In the past 5 years, the city has spent over $40 million in bond funds to improve the wastewater collection system and water treatment and distribution system to meet our requirements under the Clean Water Act and Safe Drinking Water Act. We are projected to spend an additional approximately $30 million in the coming 5 years, but this will still not be enough to meet all of our needs and requirements. Additionally, over the past 10 years, the city implemented a series of rate increases, the highest of which was a 20 percent increase last year. This raised the average bill from $43 to $51 per month, with future rate increases on the horizon. With approximately 37 percent of the citizens of Hattiesburg living at or below the poverty level, these dramatic increases in rates are unaffordable to over one-third of our residents. Without alternate funding sources and additional flexibility, these regulatory requirements combined with the deterioration of our system will require our citizens to bear additional financial burdens.

Hattiesburg is committed to investing in our water resources where the science, impacts, and benefits justify. We struggle, however, with the reality that each federal regulatory program and federal mandate is assessed on communities independent from other program requirements. These costs are all paid by the same people, our taxpayers, and it is an unfair burden.

Fortunately, we've recently been able to provide our citizens with some relief. Part of the large rate increase was to fund the purchase of land and the construction of a new land application wastewater treatment system. Last month a decision was made to abandon the land application

concept, therefore anticipated construction costs of a new system and the associated rate increases have been delayed, for now.

It is important to note that the capacity of city government to respond to federal demands is limited. Cities in Mississippi must seek legislative approval to reap the benefits of local option sales taxes, local motor vehicles fees, and public-private partnerships to help pay for its infrastructure needs. Most cities have access to only one or two streams of revenue. Moreover, states or voters in many areas have imposed caps on the revenues cities are able to raise, often by limiting increases in the property tax. NLC's annual *City Fiscal Conditions*[4] survey research shows that city government revenues have not fully recovered from the Great Recession. The recovery of city finances has been protracted—10 years out, general fund revenues are still below pre-Recession levels. Cities have responded by making tough decisions to reduce services and lay off employees. As of this month, local government payrolls are still 58,600 jobs below their pre-Recession high.

Green Infrastructure as a Solution
Last October, Hattiesburg was announced as one of five cities in the nation selected for a green infrastructure pilot program though EPA. With technical assistance from EPA, we will develop a long-term stormwater plan to improve water quality as we revitalize a portion of our city known as Midtown. Little Gordon's Creek cuts through the center of Midtown and is a tributary to Gordon Creek, which discharges to the Leaf River that is impaired due to fecal coliform and nutrient pollution. This plan will extend the life of our infrastructure, save the city and taxpayers money, and will hopefully serve as an economic development tool in attracting businesses. The City of Hattiesburg is proud be one of the cities selected for this pilot program and to serve as a model for other cities developing an integrated stormwater plan.

With the pilot program announcement, EPA released a draft guide, *Community Solutions for Stormwater Management: A Guide for Voluntary Long-Term Planning*. The document describes "how to develop a comprehensive long-term community stormwater plan that integrates stormwater management with communities' broader plans for economic development, infrastructure investment and environmental compliance. Through this approach, communities can prioritize actions related to stormwater management as part of capital improvement plans, integrated plans, master plans or other planning efforts."

Mr. Chairman, this is exactly what cities and local governments have been seeking under the Integrated Planning Framework and the Financial Capability Framework that we developed with EPA several years ago—the ability to work with our state and EPA to prioritize investment in wet weather overflows and flooding collectively, rather than individually; the ability to comprehensively deal with wastewater and stormwater investments as well as unfunded mandates; the ability to address complex problems through innovative solutions.

Overview: Integrated Planning and Financial Capability

[4] National League of Cities, "City Fiscal Conditions 2016," October 16, 2016. Available at: http://www.nlc.org/resource/city-fiscal-conditions-2016

The Integrated Planning Framework provides communities with the ability to develop compliance schedules and prioritize funding for the projects that have the greatest positive impact on water quality to meet the goals of the CWA at a given time. By using an integrated approach, a community can produce a viable plan that selects from among several options to afford the greatest environmental benefit and address regulatory requirements, while reducing their financial impacts.

The Integrated Planning Framework makes a long-term plan of integrated stormwater and wastewater projects aimed at meeting the numerous CWA requirements more feasible. By allowing cities to prioritize all projects by first funding those that will provide the greatest overall benefit, we will be able to stretch our limited financial capacity.

Recognizing that a local government's integrated plan is intrinsically tied to its rate-payer base, local governments entered into an affordability dialogue with EPA. The dialogue stemmed from the growing concern that costly water and wastewater mandates were dramatically impacting low- and fixed-income residents. The consensus of local officials is that the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community's ability to pay, and often places a particularly high burden on residents at the lower end of the economic scale.

The Financial Capability Framework allows consideration of additional information that may be relevant in negotiating schedules for permits or consent decrees. This includes residential indicators such as income distribution, poverty rates and trends, and sewer and water usage, as well as community indicators, such as population trends, unemployment data, and dedicated revenue streams or limitations.

However, the Financial Capability Framework maintains reliance on EPA's "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" (EPA 832–B–97–004), dated February 1997, and two percent of median household income as the threshold for determining the affordability of rate or tax increases required to meet a regulatory requirement. This figure, however, often does not provide an accurate indicator of what all citizens across the economic spectrum of a community can afford.

Therefore, we recommend that the guidance be revised to eliminate reliance on median household income as the critical metric for determining investment level consistent with the Agency's 2014 Financial Capability Framework.

Flexibility through Permits

A flexible approach to integrated planning will allow communities to prioritize among all the needs and financial commitments of the community. EPA and the states can and should allow flexibility through the use of permits with regard to time, implementing best management practices, and coordinating and prioritizing projects between different regulatory programs.

With regard to permits, implementation of the integrated planning framework can most efficiently and effectively be achieved through the permitting process, rather than through the use of consent decrees. The states have the authority to implement long-term compliance

schedules through the NPDES permit program, and therefore judicial consent decrees and EPA administrative orders are unnecessary. We reiterate this concern because the integrated planning framework leaves the door open to consent decrees as a means of implementation.

We recommend and request the ability to extend permit cycles to longer timeframes to align with realistic and achievable goals of water quality improvements, which would allow longer term and lower rate impact to fund regulatory improvements. Expanding permit cycles would give cities time to make the right decisions, time to implement solutions, time to see the results, and if necessary, time to adjust implementation if we are not seeing the results we desire or if there is a better way of reaching our goal. And as cities' fiscal recovery continues to lag, we need time to restore our local economies. Explicit provisions within the integrated planning framework that allow for more time to implement related regulatory projects under several separate but potentially related permits would also provide needed flexibility.

Related to this is the time and flexibility to implement best management practices, which may require a longer planning and implementation horizon, but may ultimately be more robust, effective, sustainable and affordable for our residents. For example, we know today that one of the most effective and recommended means for preventing stormwater pollution from entering our waterbodies is to construct and retrofit traditional "curb and gutter" with local drainage swales that can both filter water and reduce flooding. Yet, most of the entire country spent the last 50 years installing curb and gutter systems. It will take decades for communities to plan and install this more effective control in coordination with other street improvements. This kind of flexibility in allowing communities the time to study, plan, fund, and implement the best solutions, including structural and non-structural solutions, for the environment and water quality is essential to effective implementation and success of the Integrated Planning Framework. Additionally, we encourage EPA to proactively publish and share integrated planning best management practices from across the country with all communities who are or are interested in pursuing an integrated planning approach.

Moving Forward – Improving the Frameworks

To help achieve the goals of the Integrated Planning Framework, we ask you to codify the EPA framework, including calling for a reassessment of the 1997 Financial Capability Guidance, as an affordable, flexible program that all communities, both large and small and urban and rural, have an equal opportunity to take advantage of and be successful in implementing. Additionally, to be effective, there must be consistency, guidance, and assistance from the various EPA regions for all communities pursing this opportunity.

We are pleased that members in both the House and the Senate have introduced legislation to this end. The *Water Quality Improvement Act* (H.R. 465), sponsored by Representatives Bob Gibbs (R-OH) and Steve Chabot (R-OH) and the *Water Infrastructure Flexibility Act* (S. 692, H.R. 1971, H.R. 2355), sponsored by Senators Deb Fischer (R-NE), Sherrod Brown (D-OH) and Benjamin Cardin (D-MD), and Representatives Lloyd Smucker (R-PA), Bob Latta (R-OH) , David Joyce (R-OH), Grace Napolitano (D-CA), Cheri Bustos (D-IL), and Marcia Fudge (D-OH) would address one of the biggest missed opportunities of the Integrated Planning Framework—that few communities nationwide have developed, approved and implemented an

integrated plan. NLC thanks each of you for your leadership on this issue. We support these bills and urge Congress to quickly approve them.

While all of these bills are steps in the right direction, there are certain provisions that we believe give cities greater confidence and assurances as they move forward with an integrated plan. Specifically, we urge Congress to support provisions that stipulate that the effluent limitations within a compliance schedule in an integrated permit must be technically feasible and economically affordable. We also urge you to include a provision that will clearly define the threshold at which financial impacts on ratepayers trigger a consideration of flexibility to address those impacts. We believe these provisions are essential to ensuring that the limited financial resources of our citizens and our cities are put to the best possible use. Without these provisions, there is less specificity for EPA and less certainty for communities that they will not continue to be burdened by federal requirements that might be technological feasible, but economically unaffordable.

Water rate and tax increases placed upon our residents to fund regulatory mandates should be reasonably affordable, and affordability within a community should be assessed based on impacts to the lowest economic level. Regulatory programs and permits with financial implications should only be imposed after taking into account a community's potential or existing financial needs and commitments. In our view, increasing fees to accommodate regulatory requirements that do not provide the overall benefits desired are difficult to justify to financially strapped residents; that is precisely when government loses credibility.

Finally, with regard to regulatory program coordination, we believe the Integrated Planning Framework administration should include pending drinking water treatment requirements under the Safe Drinking Water Act, in addition to sewer and stormwater treatment under the CWA. Cities would benefit from a national policy framework that allows for a similar integrated and coordinated approach.

Additional Challenges: Funding for Water Infrastructure

Addressing the policy challenges is just one part of the equation to addressing our nation's water-related challenges. Addressing our water quality needs is important, and while substantial in its own right, it is merely part of a myriad of funding priorities that all communities are struggling to meet. The lack of quality water infrastructure threatens local and regional economies, the environment, and public health and safety. Like other communities, much of Hattiesburg's water infrastructure is beyond its expected design life and is in need of substantial funding to address our existing system needs. Therefore, as the Administration and Congress work to develop an infrastructure proposal, we call on you to support existing mechanisms for financing water infrastructure projects, as well as direct funding to local governments.

Within the context of an infrastructure proposal, we ask the Administration and Congress to support the following local government principles:

- America's cities are paying their fair share: over two-thirds of all public infrastructure projects in the United States are locally financed by municipal bonds.

- While the demands on America's infrastructure grow each year, federal funding has fallen to historically low levels, placing the economic and physical well-being of our cities and towns in jeopardy.
- City leaders are best positioned to identify where infrastructure needs are greatest, and should be given a stronger voice in how limited federal dollars are spent.

Specifically, we ask Congress to support an infrastructure package that:

- Protects the tax exemption for municipal bonds;
- Includes direct funding for local governments and uses existing mechanisms and programs for funding and financing;
- Includes transportation, water and broadband;
- Is forward looking and makes investments that are built for the 21st century;
- Is accessible for small and large cities; and
- Includes workforce development.

Finally, specifically as it relates to water infrastructure, NLC calls on Congress to pass legislation that will:

- Reauthorize and provide federal funding for water infrastructure improvements through the Clean Water and Drinking Water State Revolving Loan Fund (SRF) programs;
- Provide full appropriation to the Water Infrastructure Finance and Innovation Act (WIFIA) and permanently establish the program beyond a pilot program;
- Remove the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects;
- Establish a comprehensive and flexible integrated planning and permitting process for local water, wastewater and stormwater management; and
- Clarify that rebates provided by local water utilities to homeowners for water conservation and water efficiency are not subject to a federal income tax.

I want to thank Transportation and Infrastructure Ranking Member Peter DeFazio (D-OR) and Water Resources and Environment Subcommittee Ranking Member Grace Napolitano for introducing the *Water Quality Protection and Job Creation Act*, which addresses the aging water infrastructure in communities nationwide and helps communities make investments in projects that support our nation's clean water. We are please to support this bill that would reauthorize and increase the authorization level for the Clean Water State Revolving Loan Fund to $20 billion over five years. Additionally, we support provisions that authorize appropriations for sewer overflow control grants for municipalities to aid in pollution control and help protect our nation's water resources

In closing, on behalf of the National League of Cities and the City of Hattiesburg, I thank you for the opportunity to submit this testimony on a most timely issue. I look forward to your questions.

QUESTION FOR THE RECORD

THE HONORABLE GRACE F. NAPOLITANO, RANKING MEMBER

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

HEARING ON IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING

MAY 18, 2017

As we look at ways to modernize our clean water priorities, I would like your thoughts on extending Clean Water Act NPDES permit terms from five years to ten years (or beyond).

In my opinion, many wastewater infrastructure projects require up to 10 years or more of planning, design and construction. Many local agencies find that they must reapply for a permit while still in the process of constructing the upgrades necessary to comply with their prior permit, and even before a project is operational. Also, a project's lifecycle can be 30, 40 or even 50 years. Local agencies contend that a five year maximum permit term creates unnecessary permit backlogs and focuses scarce resources on permit renewals rather than today's most pressing water quality problems. Local agencies further contend that longer permit terms would align permitting practices with modern realities and also facilitate watershed-based approaches for stormwater quality improvements, such as are being used in my district.

- Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?

THE HONORABLE JOHNNY L. DuPREE, MAYOR, CITY OF HATTIESBURG, MISSISSIPPI

Yes, we recommend and request the ability to extend permit cycles to longer timeframes to align with realistic and achievable goals of water quality improvements, which would allow longer term and lower rate impact to fund regulatory improvements. Expanding permit cycles would give cities time to make the right decisions, time to implement solutions, time to see the results, and if necessary, time to adjust implementation if we are not seeing the results we desire or if there is a better way of reaching our goal. This additional flexibility would benefit cities' integrated planning efforts to prioritize and sequence projects over longer time periods.

WRITTEN STATEMENT FOR THE RECORD

THE HONORABLE TODD PORTUNE
COMMISSIONER, HAMILTON COUNTY, OHIO

ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA: IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 18, 2017
WASHINGTON, D.C.

Thank you Chairman Graves, Ranking Member Napolitano and members of the subcommittee, for the opportunity to testify on "Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning."

My name is Todd Portune and I am an elected county commissioner from Hamilton County, Ohio where I currently serve as Chairman of the Hamilton County Board of Commissioners. Today I am representing the National Association of Counties (NACo).

About NACo

Founded in 1935, NACo is the only national organization that represents county governments in the United States, bringing together county officials to advocate with a collective voice on national policy, exchange ideas and build new leadership skills, pursue transformational county solutions, enrich the public's understanding of county government and exercise exemplary leadership in public service.

About America's Counties

Counties are highly diverse, not only in my state of Ohio, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, and public health and environmental responsibilities. Counties range in area from 26 square miles (Arlington County, Virginia) to 87,860 square miles (North Slope Borough, Alaska). The population of counties varies from Loving County, Texas, with just under 100 residents, to Los Angeles County, California, which is home to nearly ten million people. Of the nation's 3,069 counties, approximately 70 percent are considered "rural," with populations less than 50,000, and 50 percent of these have populations below 25,000. At the same time, there are more than 120 major urban counties, which collectively provide essential services to more than 130 million people each day.

County governments exist to deliver public services at the local level, with accountability to our constituents and communities as well as to state and federal authorities. In fulfilling this mission, counties are not only subject to state and federal regulations, but also help to implement them at the local level. Although county responsibilities differ widely between states, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment/training, land use planning and zoning, and environmental protection.

In the arena of the Clean Water Act (CWA), counties play a key role as co-regulators and regulated entities in protecting the environment and providing public water services for our residents and businesses. As regulators, counties are often responsible for controlling water pollution at the local level. We may enact rules on illicit discharges, remove septic tanks and adopt setbacks for land use plans, and may be responsible for water recharge areas, green infrastructure, water conservation programs and pesticide use for mosquito abatement. We also provide extensive outreach and education to residents and businesses on protecting water quality and reducing water pollution.

Additionally, counties own and maintain vast amounts of public infrastructure, including 45 percent of America's road miles, nearly 40 percent of bridges, drinking water utilities, wastewater treatment plants and stormwater infrastructure, all of which are subject to federal water CWA rules.

About Hamilton County, Ohio

While Hamilton County is considered "urban" with a population close to 808,000 residents, we have a diverse mix of urban and suburban communities. The county lies in southwestern Ohio and encompasses 413 square miles. The county seat is Cincinnati, the third largest city in Ohio. Our primary job market is comprised of professional and business services, manufacturing, finance, management, higher education systems, health care and small businesses. In fact, Hamilton County is the home of such well-known companies as Procter & Gamble, Kroger, and Macy's.

Most of Hamilton County is served by the Metropolitan Sewer District of Greater Cincinnati (MSDGC), which is a County Sewer District formed under the Ohio Revised Code in the 1920's. Almost 300,000 households rely on MSDGC and its footprint includes all of the older, core areas of the community.

Since 2006, the county and MSDGC have been the lead defendant under a consent decree for CWA noncompliance. The litigation was filed by the U.S. Environmental Protection Agency (EPA), the Ohio Environmental Protection Agency and the Ohio River Valley Water Sanitation Commissioner (ORSANCO), a multi-state entity formed by Congress to oversee the Ohio River. A consent decree is a legal term used to depict a settlement sanctioned by orders of the court.

Under the 2006 signed consent decree, in addition to existing operation, system repair and infrastructure maintenance costs, the county and its taxpayers are required to invest over three billion dollars in extra projects and upgrades. As of January 2019, the county will have spent over one billion dollars to meet these goals, with two billion more to go.

Counties of all sizes can benefit from integrated planning

The topic of this hearing is of great importance to local governments that are co-regulators under federal Clean Water Act (CWA) regulations.

Over the past several decades, we have seen the convergence of a "perfect storm" upon our local governments and citizens. This includes the rising expenses associated with CWA wastewater-related wet weather consent degrees and tighter stormwater requirements and the limited capability of our counties and residents to absorb these additional outlays.

In some counties, the cost of mandated CWA obligations have ranged from hundreds of millions to billions of dollars per county. Since many wastewater and stormwater systems are partially (or wholly) funded through user fees, this leads to huge rate increases for our residents.

Recognizing these challenges, in 2012, the EPA released its "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Framework) as a supplemental to its 2011 memorandum on "Achieving Water Quality Through Stormwater and Wastewater Plans." The Framework was intended to drive reforms both within the EPA regions and local communities to holistically address the high cost of water infrastructure. Essentially, integrated planning offers local governments an opportunity to meet a multitude of federal clean water requirements by bundling and prioritizing their water quality mandates. However, numerous challenges remain to the Framework's nationwide adoption.

Today, I would like to focus my remarks on three key points:

- **Integrated planning can help counties address the growing list of Clean Water Act needs.**
- **Integrated planning offers a path for counties to meet the growing universe of CWA regulations in an environmentally-sensitive, streamlined and cost-effective manner.**
- **Congress can play a role in protecting water quality and ensuring water affordability by passing legislation in Congress to support integrated planning.**

Integrated planning can help counties address the growing list of Clean Water Act needs.

First, the number of complex federal requirements and unfunded mandates on counties, both within and outside the CWA Act, has risen sharply.

Federal agencies have been issuing an increasing number of regulations in recent years. This growing number of regulations comes at a time when counties—regardless of size—are experiencing

significant fiscal constraints and our capacity to fund compliance activities is often limited. Furthermore, according to NACo's County Economies report released this past February, only one in four of the nation's 3,069 counties have fully recovered to pre-recession economic conditions.

Even if the economic picture was improved for counties, states put significant restrictions on our ability to generate local revenue. In fact, more than 40 states limit counties' ability to collect sales and/or property tax. Some states also limit counties' ability to levy taxes for environmental mandates such as fees on solid waste, water and/or sewer services.

An example of this hails from California. In 1996, voters in the state passed Proposition 218, the "Right to Vote on Taxes Act," which requires prior voter approval for any new tax changes at the county or city level. This change was significant for local governments who used the local tax base to pay for citizen-requested programs and services and state and federal requirements. Proposition 218 is especially relevant to California counties, as they face some of the strictest state and federal stormwater requirements in the nation.

San Diego County is an urban county of 3.3 million residents and over 4,526 square miles in southern California. Over the past 25 years, although the county has made substantial investments in its stormwater management program, it has become increasingly difficult to fund. Within the county's existing National Pollutant Discharge Elimination System (NPDES) stormwater permit, the county is required to address several Total Maximum Daily Load (TMDL) water pollution numeric limits. For one TMDL on bacteria, it is estimated that this requirement alone will cost the county close to $567 million over the 20-year compliance schedule.

This puts the county in a difficult position. Under Proposition 218, the county needs voter approval to raise the funds to comply with the 2011 TMDL requirement on bacteria. If the voters vote down an increase, the county will either have to make cuts to other key non-environmental county programs or face stiff CWA penalties from state and federal regulators.

Second, in the past several decades, the federal government has been using litigation-driven consent decrees and administrative actions to drive tighter local CWA requirements for combined sewer overflow (CSO) and sanitary sewer overflow (SSO) at wastewater treatment plants. Since the 1990's, EPA and the U.S. Department of Justice (DOJ) have levied high civil penalties on these counties and cities out of compliance.

There are at least 781 sewer districts from across the county that are under consent decree, in litigation or under threat of litigation for CWA compliance issues. The litigation and/or the cost of implementing a consent decree is extremely expensive and ratepayers are often forced to shoulder the cost, as there are no federal funds (other than a limited amount for loans from the CWA State Revolving Fund program) to assist sewer districts to achieve compliance.

Miami-Dade County, located in the southeastern-most tip of Florida, has a population of approximately 2.6 million and encompasses 2,431 miles. Since the mid-1990's the county has been operating under a CWA consent decree, last revised in 2013, for stormwater and wastewater compliance issues. Under the settlement, the county must upgrade three regional wastewater treatment plants and its sewer collection system, at an estimated cost of $1.6 billion. Additionally, the county paid a civil CWA penalty of $978,000 ($511,800 to the United States and $466,200 to the State of Florida) for previous CWA violations.

While most wastewater treatment plants process stormwater through their primary treatment plant before it is released, for CSO and SSO, the system is designed to "overflow" the increased "wet weather" runoff around the primary treatment plant to a secondary, less stringent treatment system. In recent years, the EPA has attempted to ban CSO and SSO activities. By EPA's own calculation, this would cost over $150 billion nationwide to implement. The cost would be borne by units of local government running the wastewater facilities, which may or may not be able to pass this cost onto residents in the community.

That is why CWA regulations cannot be calculated in isolation from the other responsibilities and requirements that the federal government places on counties.

Third, our nation's water infrastructure is aging rapidly and replacement needs are fast outpacing available funds. Local governments fund the majority of all water and wastewater investments but many of our drinking and wastewater treatment facilities, including plants, pumps and pipes, have far exceeded their life cycle. Some of these systems were built over 75-100 years ago, and with limited funding, local governments have been unable to undertake needed upgrades.

In Hamilton County, we have approximately 3,000 miles of sanitary and storm sewer lines. While the suburban parts of MSDGC largely have newer piping systems, the urban core has an older network of pipes. Parts of this system are very old and are vulnerable to collapse. Additionally, we are now experiencing significant and unexpected damages from major isolated and sudden storm events, which have overwhelmed the system, caused significant damage and added to the MSDGC operating

costs. In the past several years, we have averaged about $50 million a year on maintenance and repairs alone.

Finally, increased costs from federal mandates, consent decrees and aging infrastructure are adversely impacting our distressed communities. Over the past ten years alone, over $40 billion in mandated CWA wastewater and stormwater upgrades were required for communities large and small nationwide. Many of these communities are located in regions that continue to face the worst economic downturn in decades. Since many wastewater and stormwater systems are partially (or wholly) funded through user fees, this leads to a huge rate increase for our residents.

This is further complicated since many user-rate based systems are in higher density areas, which tend to have a large population of disadvantaged individuals. The cost per capita to replace and upgrade aging water systems bears an even larger burden on residents in these distressed communities, which can impact cost share options and take up a significant portion of a community's budget.

Hamilton County, especially in its urban core that includes the City of Cincinnati, is a distressed community. Countywide, a little over ten percent of our county households earn less than $10,000. Within Cincinnati city limits, over 17 percent make less than $25,000 a year. In the past 15 years, the poverty rate in Hamilton County has grown from 11.8 percent to 18.3 percent; the poverty rate in the City of Cincinnati, meanwhile, grew from 21.9 percent to30.5 percent.

These disadvantaged families will be impacted the most by increased sewer rate fees and they will end up paying unaffordable, punitive sewer rates if the current rates of spending continue. Given the increasingly poor state of my county and many other urban counties, the financial impact of the combined CWA burdens on our citizens is being placed disproportionately on low-income individuals.

And, to the extent programs are created to lighten the burden on those under the poverty line, even higher burdens are then shifted onto the working poor and the middle class.

Let me stress that the combined weight of the consent decree, annual operations, management and other obligations are crushing to our citizens. Here are some key facts just on my county:

- Of MSDGC's annual wastewater budget of $439 million, over $119 million – or 27 percent – is now spent on debt to finance work, and that amount is projected to soar to close to $400 million per year if current spending rates continue;

- From 2003-2014, MSDGC's average wastewater user fee bill increased almost nine percent;
- The average quarterly MSDGC bill per household was $211 in 2015, but due to our CWA consent decree and other costs, the quarterly invoice is estimated to soar to $687 by 2037 unless something is done to protect ratepayers;
- The average annual MSDGC bill is about $800 – while the average annual property tax assessment on a $100,000 home is just under $400; and
- According to the 2016 Hamilton County Affordability Task Force report, over 16,560 MSDGC accounts are in delinquency status.

My county is not an isolated case. Communities like mine have been dealing with the fallout associated with a combination of high employment, housing foreclosures, declining water and sewer uses and increased mandates under CWA consent decrees.

Integrated planning offers a path for counties to meet the growing universe of CWA regulations in an environmentally-sensitive, streamlined and cost-effective manner.

Integrated planning is an idea that has been around for a while. Many states are already utilizing and encouraging the use of integrated planning. Contrary to EPA's existing Framework, integrated planning has not been widely used at the federal level. However, EPA's Integrated Planning policy offers several advantages over the traditional way of mandating CWA responsibilities.

First, while participation is voluntary in integrated planning, counties must opt-in, and the final plan will be incorporated into existing NPDES stormwater permits, rather than enforcement orders, administrative actions or consent decrees. This allows the federal, state and local governments to work together to come up with a technically feasible plan.

A key part of integrated planning is that it will not exempt counties and other local governments from federal CWA requirements. It does not preempt existing federal law; it just allows a community with multiple CWA-related permits to have flexibility in those requirements.

Second, integrated planning will help counties prioritize water quality and infrastructure goals based on the most pressing issues. Under the CWA, counties may be dealing with a multitude of CWA mandates ranging from wastewater treatment upgrades, aging infrastructure, CSOs, SSOs, NPDES, municipal separate storm sewer system (MS4) permit requirements and TMDL water quality limits.

Under an integrated plan, we would be allowed to prioritize those programs that give our community the best bang for the buck, while protecting the environment and keeping water costs down.

For example, if a county has twenty pipes breaking a day at a cost of several thousand dollars each and a CSO that only overflows every several years, what is the most immediate problem that needs to be addressed? Keep in mind that without functioning pipes, the utility is unable to deliver water to customers, which means less revenue to pay for the required upgrades. Under integrated planning, counties, cities and utilities will work in partnership with federal and state governments to determine those answers.

Third, integrated planning will help communities simplify competing requirements from separate wastewater and stormwater programs.

To further compound the problem, wastewater and stormwater programs are often managed under two separate CWA permitting frameworks and regulated differently from each other. At the county level, this means that these permits are likely implemented by separate county departments that may have competing priorities.

A case in point: Palm Beach County is an urban county of 1.4 million residents in southeastern Florida that encompasses 2,383 square miles. While the county directly operates both wastewater and stormwater infrastructure, these activities occur in different county departments and administrative structures. For example, the Water Utilities Department oversees the county's four wastewater treatment plants and participates in the governance of another wastewater plant jointly managed by several local utilities and operated by the city of West Palm Beach. Wastewater activities are funded through established wastewater user rates, which are tied to the U.S. Bureau of Labor Statistics Consumer Price Index for Utilities.

But, on the stormwater side, Palm Beach County is one of 40 co-permittees to the CWA Phase 1 Palm Beach County MS4 Permit, for which the Northern Palm Beach County Improvement District is the lead permittee. A steering committee coordinates the joint implementable activities of the permit and each co-permittee develops its own Stormwater Management Program (SWMP) as required under CWA.

Funded through the county's general fund, SWMP is overseen by the county's Department of Environmental Resource Management and implemented by the county's Roads and Bridges division in the Engineering Department. The departments oversee SWMP for projects and measures

associated with structural controls, redevelopment sites, roadways, flood control, municipal waste treatment, storage and disposal facilities, pesticide and fertilizer application, illicit discharges, industrial and high risk facilities and construction site runoff.

Essentially, integrated planning gives counties the flexibility to merge their multiple CWA permits and requirements into one plan, which helps counties meet their CWA obligations, save money and prioritize local water projects.

Fourth, integrated planning provides more flexibility for counties to try new, innovative approaches, such as green infrastructure, while improving water quality and saving their citizens money. Under current federal policies, local governments are given little incentive to experiment and try new ideas. If a project fails, we face federal and state penalties, which disincentivizes counties from taking these risks.

While much of the discussion on integrated planning has focused on CSOs and SSOs, other counties have been assessing how to use integrated planning for other CWA-related issues. For example, Miami-Dade County, Florida is evaluating whether they can capture and store surplus water from their wet season. Additionally, the county is trying to find viable uses for reclaimed wastewater to meet other water needs.

Under integrated planning, counties will have more freedom to try new ideas, like natural green infrastructure systems, without fear of federal and state agencies cracking down on them if their plan is not successful. This autonomy will allow other communities to build upon ideas and ultimately save money.

Congress can play a role in protecting water quality and ensuring water affordability by passing legislation in Congress to support integrated planning.

While initially promising, in reality, EPA's Integrated Planning Framework has not been used to the extent that it could be, mainly because EPA regions have been reluctant to use the principles in the field. This is counterproductive to our shared goal of clean water. In my experience, EPA regional offices are relying on an outdated model that relies more on civil penalties rather than incentives.

To date, EPA has approved very few integrated plans. The consent decrees themselves are unrealistic in their assessment of a community's ability to pay to meet CWA requirements. Unless EPA is fully committed – financially, legally and technically – the Framework will fall into oblivion. But, if used

consistently and broadly across all EPA regions, the Framework can be a valuable instrument in the toolbox to help local governments meet CWA water quality goals while keeping water rates affordable for our citizens.

A number of bills have already been introduced in both the U.S. Senate and the U.S. House of Representatives, including the "Water Quality Improvement Act" (H.R. 465) and the "Water Infrastructure Flexibility Act" (S. 692, H.R. 1971 and H.R. 2355). **We thank the sponsors of these bills and we support your efforts to swiftly pass legislation that would codify EPA's Integrated Planning Framework to help local governments comply with the CWA in a more flexible and cost effective manner.** Through your efforts, we may yet be able to work collaboratively with the federal and state governments to craft reasonable policies that accomplish environmental goals and provide affordable water to our citizens.

As Congress moves forward with legislation, we would like to reiterate the importance of providing greater detail on affordability and other related issues, which would be helpful to spur implementation of EPA's Framework:

Affordability concerns: Any legislation on integrated planning needs to provide greater detail on affordability concerns. While EPA has developed tools to measure the ability of communities to pay for additional CWA requirements, EPA relies heavily on its median household income (MHI) criteria to determine affordability. Under MHI, EPA looks at the total one year utility cost for a residential customer and the median household income for all customers to determine what is affordable.

For example, if the agency uses a two percent MHI for Hamilton County's $49,000 average annual household income, the base water rate would be set at $980 per year. This rate is not affordable for our low-income populations, who would then be paying close to ten percent of their annual income on yearly sewer costs.

We recommend that any legislation should instruct the EPA to review and revise their guidance on affordability for CWA compliance measures to better gauge a community's true financial capability to pay for these CWA mandates. This would include efforts to eliminate the MHI as a primary tool to gauge community affordability.

Flexibility to meet CWA goals: Counties must be allowed the flexibility to try new, innovative approaches in meeting the objectives of the CWA to ensure the investments make sense and are cost-affordable for our already stressed ratepayers.

As part of Hamilton County's consent decree, MSDGC was required to develop a $3.1 billion Wet Weather Improvement Plan that requires large investments in "gray" infrastructure – deep tunnels that store stormwater runoff to be treated during dry periods through our sewer treatment plants. We believe that by using more innovative green infrastructure approaches to correct CSOs, SSOs, and stormwater impacts during wet weather events, can provide significant savings to our ratepayers over the long-term. Communities must be able to develop alternative wet weather management approaches to lessen the financial impact, and have indeed found that they can achieve the same or better water quality results at a lower cost using locally-driven solutions that combine watershed approaches, green infrastructure, low impact development, gray-build infrastructure and other innovative techniques to reduce wet weather impacts.

Consider the costs of all federal environmental requirements: While the Framework traditionally focuses on wastewater and stormwater, we believe integrated planning should include cost considerations all other federal environmental mandates that protect our citizens and the environment.

Elimination of civil penalties: In the past several decades, EPA and DOJ have increasingly relied on consent decrees to improve water quality in our communities. These consent decrees and associated civil penalties are very expensive for both counties and the citizens they represent. We recommend that Congress eliminate CWA civil penalties and instead focus on reinvesting those funds back into integrated planning efforts within that community.

Extend NPDES permits or offer rolling permit cycles: Under integrated planning, rather than using a consent decree, the agreements of the plan are incorporated into existing NPDES permits. However, since NPDES permits only run for five years and integrated planning efforts extend well past five years, we urge Congress to consider longer compliance schedules for NPDES permits and/or rolling permit cycles.

Use demonstration projects: In communities currently facing expensive CWA mandates, in addition to codifying EPA's Framework, Congress should consider a small number of pilot projects to test and modify the framework on the ground. This will ensure EPA is working with local communities in a meaningful manner to encourage the use of innovative and flexible approaches in meeting compliance obligations under the CWA. Priority should be given to communities that are hardest hit by the cost and unaffordability of consent decree managed programs and the demonstration program should include data collection to support green infrastructure CWA programs.

Increased funding opportunities: While there is significant interest in integrated planning, our counties note that the primary barrier is lack of funding. The EPA often has new regulatory requirements and/or tighter permit obligations with little time available for implementation, let alone for coordinating an integrated plan for complex water systems. NACo recommends that Congress allocate funding to address these challenges.

In conclusion

Chairman Graves and Ranking Member Napolitano, counties are encouraged by your efforts to use integrated planning to protect water quality. We stand really to help Congress in your efforts.

Thank you again for the opportunity to testify today on behalf of America's 3,069 counties. I would welcome the opportunity to address any questions.

NATIONAL ASSOCIATION of COUNTIES NACo

QUESTION FOR THE RECORD

The Honorable Grace Napolitano, Ranking Member
Subcommittee on Water Resources and Environment
Hearing on Improving Water Quality through Integrated Planning
May 18, 2017

Question for Commissioner Todd Portune, Commissioner, Hamilton County, Ohio

As we look at ways to modernize our clean water priorities, I would like your thoughts on extending Clean Water Act NPDES permit terms from five years to ten years (or beyond).

In my opinion, many wastewater infrastructure projects require up to 10 years or more of planning, design and construction. Many local agencies find that they must reapply for a permit while still in the process of constructing the upgrades necessary to comply with their prior permit, and even before a project is operational. Also, a project's lifecycle can be 30, 40 or even 50 years. Local agencies contend that a five year maximum permit term creates unnecessary permit backlogs and focuses scarce resources on permit renewals rather than today's most pressing water quality problems. Local agencies further contend that longer permit terms would align permitting practices with modern realities and also facilitate watershed-based approaches for stormwater quality improvements, such as are being used in my district.

Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?

ANSWER: Ranking Member Napolitano, I concur with your observations concerning the length of permit terms under the Clean Water Act (CWA). In my county, we must plan expensive CWA compliance construction projects several decades out. But, since National Pollution Discharge Elimination System (NPDES) permits are currently limited to five years, it is difficult for us to plan ahead. NPDES permits can be time-consuming and expensive to obtain, even for renewals, and there is always a good chance that the issuing agency will change the terms of the permit. This, of course, makes it more difficult to effectively plan longer-termed projects, the scope of which also may change with new permit conditions. That is why counties believe that the U.S. Environmental Protection Agency and the states that administer the NPDES permit program should have the ability to lengthen the term of NPDES permits from five to ten years or even issue them on a rolling basis. This change would allow communities to better plan for future CWA compliance projects while meeting the goals of the Act.

E C O S

Testimony

**"Building a 21st Century Infrastructure for America:
Improving Water Quality through Integrated Planning"**

**Subcommittee on Water Resources & Environment
House Transportation & Infrastructure Committee**

Thursday, May 18, 2017

by

**Craig Butler, Director
Ohio Environmental Protection Agency
and
Water Committee Chair and Executive Committee Member,
Environmental Council of the States**

Main Points

1. Communities are facing growing challenges to meeting federal Clean Water Act (CWA) water quality compliance requirements, including wastewater and storm water management obligations. Tools like integrated planning provide needed flexibility for communities and regulators to address complex environmental problems together. Regulators at all levels should support states, cities, and communities by encouraging the use of tools that provide the ability to tackle the most pressing compliance issues first. Such prioritization ensures communities can take into account the promotion of public health and the environment in their compliance strategies.

2. Recommitting to and investing in our county's infrastructure is currently a national, bipartisan focus. States and the U.S. Environmental Protection Agency (U.S. EPA) are working to identify how best to invest funds that may become available. Integrated Planning gives communities a tool to understand their needs, assess capabilities, and plan strategically will help those investments go further.

3. Integrated planning has been successfully piloted across the country. Despite successes and a 2012 U.S. EPA Integrated Municipal Storm Water and Wastewater Planning Approach Framework document that encourages its use as a tool, integrated planning has yet to be fully embraced. Uncertainty about consistent application has slowed its integration into planning processes. U.S. EPA guidance and examples are a good start, but additional legislative clarity would make integrated planning a more attractive and less risky option. Legislation formalizing integrated planning within the CWA would eliminate the uncertainty for communities that wish to consider it.

Chairman Graves, Ranking Member Napolitano, and Members of the Subcommittee, good morning. My name is Craig Butler, and I am Director of the Ohio Environmental Protection Agency. I appreciate the opportunity to testify today as the Water Committee Chair and an Executive Committee Member of the Environmental Council of the States (ECOS), a national, nonpartisan organization whose members are the leaders of the state and territorial environmental protection agencies across America. ECOS members include the leaders of your states' environmental agencies, the Louisiana Department of Environmental Quality and the California Environmental Protection Agency.

State agencies are at the front lines of environmental protection and are engaged daily with communities to assist them with balancing competing financial and regulatory priorities. Notably, communities large and small across the country are working hard to provide a wide array of municipal services, including delivering clean, safe drinking water, and managing and cleaning municipal wastewater and storm water, as required by federal, state, and local law and regulation.

Historically, wastewater management requirements under the CWA have been approached in silos, with communities directed or required to plan and expend resources on wastewater and storm water obligations independently. It has been clear for a long time that this segmented approach fails to consider how to strategically assess, and pace, the total compliance investment a community is making on water and storm water – sometimes resulting in unrealistic commitments and compromising other community health and environmental investment needs. Looking at these costs cumulatively allows communities to determine their best collective path

forward, with integrated consideration of household economic health, community borrowing potential, and public health and environmental protection goals.

Communities Need the Ability to Prioritize to Maximize Constrained Resources. According to a report by the Association of Metropolitan Water Agencies and the National Association of Clean Water Agencies, "today, local taxpayers pay for 95 percent of water and sewer infrastructure development, rehabilitation, and operating costs."[1] This creates a large burden on communities, as it often becomes cost-prohibitive to address all water infrastructure and compliance needs simultaneously. As a testament to how communities continue to struggle to meet their compliance obligations under the CWA, in addition to all other necessary municipal services, let me share with you some Ohio data. In Ohio we have documented clean waste water needs that exceed $14.5 billion over the next 20 years, including some communities that have multi-billion dollar consent orders to correct their combined sewer overflows. In addition to the big cities, we have communities ranging from medium to very small in size that have financial obligations to fix staggering problems with failing wastewater infrastructure. Coinciding with these increasing obligations, the proportion of household income dedicated to water and sewer bills is growing at a rate that outpaces inflation as measured by the consumer price index. These communities need help financially, and they need to have the ability to prioritize their problems and address them with flexibility.

Attention to infrastructure funding needs is also apparent at the state and federal levels. ECOS recently formed an infrastructure workgroup of state environmental commissioners to evaluate administrative and legislative proposals pertaining to infrastructure. In late March, an ECOS

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1 National Association of Clean Water Agencies and Association of Metropolitan Water Agencies. "The Impacts of Altering Tax-Exempt Municipal Bond Financing on Public Drinking Water & Wastewater Systems." 13 July 2013. Web. <https://www.amwa.net/sites/default/files/AMWA-NACWA_MuniBondAnalysis_July13.pdf>.

inventory found that the top 20 water and wastewater projects per state "ready to go" in 2017, when combined, present a total infrastructure funding opportunity of over $14 billion.[2] Given this great national need, ECOS supports integrated planning as an important implementation tool to make the most of those investments, and help communities leverage available resources strategically.

Given the pressure of limited funding at the national, state, and community levels, there is a pressing need to develop and provide financial and planning tools to help communities balance their obligations and meet environmental and public health objectives with constrained resources. ECOS Resolution 04-3: Small Community Challenges, "requests that U.S. EPA and Congress work with states and local governments to develop innovative strategies to address current and future small community drinking water and wastewater requirements." Integrated planning is one such strategy.

What is Integrated Planning? An integrated planning approach offers a voluntary opportunity for a municipality to propose to meet multiple CWA requirements by identifying efficiencies from separate wastewater and storm water programs and sequencing investments so the highest priority projects come first. This approach can also lead to more sustainable and comprehensive solutions, such as green infrastructure,[3] that improve water quality and provide benefits to enhance community vitality. The integrated planning approach is not about changing existing regulatory or permitting standards or delaying necessary improvements. Rather, it is an option to

[2] "ECOS Inventory of States' 2017 "Ready to Go" Water and Wastewater Projects." *The Environmental Council of States*. 22 Mar. 2017. <https://www.ecos.org/documents/ecos-inventory-of-states-2017-ready-to-go-water-and-wastewater-projects/>

[3] "Green Infrastructure." U.S. Environmental Protection Agency, 10 May 2017. <https://www.epa.gov/green-infrastructure>.

help municipalities meet their CWA obligations while optimizing their infrastructure investments through the appropriate sequencing of work.[4]

States are Demonstrating the Desire for Integrated Planning Progress. Communities in Ohio and others across the country are voluntarily working on integrated planning. We are even seeing legislation at the state level, like in California where state legislators are working on a bill to amend the Porter Cologne Water Quality Control Act, which authorizes the California State Water Resources Control Board to implement federal and state water quality regulations, to include U.S. EPA's Guidance for Financial Assessment policy. This policy establishes a process to determine a community's capability to implement integrated water plans. This, among other examples, is indicative of the clear need and growing interest in this tool.

Even with broad acceptance of the use of integrated planning among regulators and communities, we have an opportunity to make it better and more accessible. The quickest and best opportunity to do that is to clearly define in the CWA that integrated planning can be used and is encouraged. While U.S. EPA has taken a good first step by developing a policy on Integrated Planning (2012 U.S. EPA Integrated Municipal Storm Water and Wastewater Planning Approach Framework), this policy is not consistently applied from state to state, or among U.S. EPA Regions – nor does policy have the effect of law.

Embarking on an integrated planning process requires a meaningful investment of time and energy for a community already balancing environmental and public health obligations. Nothing can be more discouraging than uncertainty over whether the plan will be accepted by regulators

[4] "Integrated Planning for Municipal Stormwater and Wastewater." U.S. Environmental Protection Agency, 01 Nov. 2016. <https://www.epa.gov/npdes/integrated-planning-municipal-stormwater-and-wastewater>.

as an opening point for a dialogue. Clarity in the CWA and certainty of support from U.S. EPA would lessen the risk for communities wanting to invest time and resources in the process. While integrated planning has been an established tool, U.S. EPA has supported pilot projects and offered a framework for community use in 2012, limiting uncertainty through additional legislation would help communities more proactively bring integrated planning programs forward.

To minimize the uncertainty to communities, but still allowing the integrated planning approach to be used, Ohio prefers using a phased approach to addressing CWA requirements by utilizing NPDES permits, rather than judicial consent decrees, to implement CWA projects. NPDES permits, which are typically renewed every five years, can easily be modified to respond to changed economic conditions or project priorities. In addition, the NPDES process encourages collaboration rather than the conflict inherent in enforcement actions. Ohio has the lead on 72 of its 89 CSO communities. Ninety percent of these have Long-Term Control Plans implemented through NPDES permits, many of which embrace integrated planning to various degrees. The other 17 communities have or are negotiating federal consent decrees.

Two excellent Ohio examples include first, Springfield, Ohio, where we used a phased approach plan and implement critical wastewater upgrades through their NPDES permit. To avoid enforcement and litigation delays, the compliance schedule was incorporated into the NPDES permit where we jointly prioritized their projects to achieve a large amount of CSO reduction in a short period of time, and they had options to re-evaluate the plan at a later date.

Columbus, Ohio, is another clear and important example of integrated planning because they addressed CSO, SSO, and MS4 storm water needs in a phased approach, incorporated green

infrastructure and changed direction after the plan was approved. The changes were implemented through a permit modification.

Providing Flexible Tools for Communities is Critical. ECOS has always been a strong proponent of flexibility in state planning and implementation of delegated federal environmental programs and initiatives, and this flexibility should be extended to communities as well. Needs differ across communities and this is a tool for communities and regulators to approach complex challenges holistically. In addition to relieving stress on communities through the timing flexibility that integrated planning can provide, one of the great strengths of this tool for communities is the option to have additional compliance flexibility through permits, rather than being subject to consent decrees or other enforcement actions.

Collaborative Planning Minimizes Challenges. ECOS members attest to the importance of federal and state collaboration to respond supportively to the challenges that communities face in complying with the CWA. Regulators should work together to create opportunities for communities to plan collaboratively. Integrated planning encourages both discussions at the community level about effective solutions. Communities are often the best suited to assess these needs and shape their own priorities, and integrated planning equips them to go through that process. The process promotes conversations with U.S. EPA and regulators about challenges and options for overcoming them, and such early conversations can prevent litigation costs as a result.

States' Role in Integrated Planning Legislation. While this testimony does not address specific legislation on integrated planning, ECOS is happy to review any legislation and provide input from states. ECOS appreciates that members of both the House and the Senate are bringing this issue forward. I appreciate the work of my fellow Ohioans on this issue. Senator Portman is

a sponsor on Senator Fischer's S. 692, the Water Infrastructure Flexibility Act, and Representative Latta, is the cosponsor on the House version of that bill, H.R. 1971, introduced by Representative Smucker. A third bill, H.R.465 Water Quality Improvement Act of 2017 introduced by Representative Gibbs, also addresses integrated planning.

It's encouraging to see several Members of Congress looking at ways to make integrated planning more accessible and certain for communities. While many are cautious of making any amendments to the CWA, in this case a specific and focused amendment could add much needed clarity to benefit communities. Greater specificity in legislation regarding integrated planning will ultimately create more certainty, and encourage the use of this flexible and collaborative tool. We look forward to continuing to work with the Subcommittee, and commenting on the various bills as they proceed.

Conclusion. Mr. Chairman, Ms. Ranking Member, and Members of the Subcommittee, I thank you for the opportunity to discuss state support for integrated planning on behalf of ECOS with you today. I am happy to answer any questions.

The Honorable Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment:

As we look at ways to modernize our clean water priorities, I would like your thoughts on extending Clean Water Act NPDES permit terms from five years to ten years (or beyond).

In my opinion, many wastewater infrastructure projects require up to 10 years or more of planning, design and construction. Many local agencies find that they must reapply for a permit while still in the process of constructing the upgrades necessary to comply with their prior permit, and even before a project is operational. Also, a project's lifecycle can be 30, 40, or even 50 years. Local agencies contend that a five year maximum permit term creates unnecessary permit backlogs and focuses scarce resources on permit renewals rather than today's most pressing water quality problems. Local agencies further contend that longer permit terms would align permitting practices with modern realities and also facilitate watershed-based approaches for stormwater quality improvements, such as are being used in my district.

Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?

Craig Butler, Director, Ohio Environmental Protection Agency:

Ohio does believe that the committee should consider providing longer terms for NPDES permits. States and NPDES permit holders could enjoy this flexibility in an effort to manage scarce staff resources as well as an incentive to those facilities in good compliance status.

In addition, Ohio recently obtained approval from U.S. Environmental Protection Agency and from the Ohio General Assembly to offer Clean Water State Revolving Loan funds that take into account the lifecycle of the proposed equipment by offering terms up to a maximum of 45 years. While this is not directly related to the NPDES permit question, it is an acknowledgment of the longevity of the facilities that are constructed, the amount of time that is necessary to construct them.

Statement for the Record

Mr. Bill Spearman, P.E. and Director-at-Large, Environmental Management

American Public Works Association

U.S. House of Representatives Transportation and Infrastructure Committee

Subcommittee on Water Resources and Environment

Hearing on:

Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning

May 18, 2017

Statement for the Record
U.S. House of Representatives Transportation and Infrastructure Committee
Subcommittee on Water Resources and Environment

Hearing on Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning

May 18, 2017

The American Public Works Association (APWA) is pleased to provide the following statement to the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment hearing focused on integrated planning.

Integrated Planning and Permitting – A Needed Option for Local Governements

Good morning, and thank you, Chairman Graves and Ranking Member Napolitano for holding this important hearing and inviting me to participate. My name is Bill Spearman and I am a water resources engineer from Saluda, South Carolina, which is located in Congressman Jeff Duncan's District. I have over 40-years of experience in stormwater and watershed management. I also currently serve on the Board of Directors for the American Public Works Association as the Director-At-Large for Environmental Management. APWA is an organization dedicated to providing public works infrastructure and services to millions of people in small, large, rural, and urban communities across our country. Working in the public interest, APWA's nearly 30,000 members plan, design, build, operate and maintain our nation's vast infrastructure assets, which are essential to our nation's economy and quality of life we all enjoy. Incidentally, next week, May 21-27, APWA will mark its 57th year of commemorating National Public Works Week.

APWA members, and the local governments and utilities they serve, understand that clean water is important for the economic, social and environmental health of their communities. It is necessary for all manner of human activities: agriculture, manufacturing, and simple subsistence. As such, we must protect this vital resource for public health, and our quality of life. Water supplies must meet our present needs while ensuring the ability of future generations to meet their needs. Protecting the world's surface water and groundwater is essential. Sustainable usage of water requires protection of all natural resources from activities detrimental to water quality. While the Clean Water Act (CWA) has made tremendous progress improving water quality in the United States, we continue to face many challenges caused by population growth, urbanization, industrial and commercial activities, agricultural practices, and other aspects of modern life.

However, these local communities also recognize that protecting water quality is only one of the issues competing for their limited financial resources. These other issues include police and fire protection, streets and roads, parks and public spaces, and many other local concerns and needs. APWA and its members share the mission of protecting their water resources while meeting the other needs of their citizens and providing the greatest value to their constituents. This includes maintaining and adequately funding the beneficial uses of their water resources.

Integrated Planning and Permitting

APWA, and its members, recognize the need for flexibility in the planning and permitting process to address the differences in communities' local water quality problems, goals, and financial capabilities. One size does not fit everyone and there must be numerous tools for local communities to use. Integrated planning and permitting should be one of those tools.

However, there are issues that must be addressed in the current integrated planning and permitting processes and procedures to ensure that they include the flexibility needed by the individual communities. The original integrated process was championed by local governments and utilities primarily focused on alternative paths to address water quality issues associated with wastewater discharges and combined sewer overflows, or CSOs. In fact, many of the initial listening sessions held by the Environmental Protection Agency (EPA) on integrated permitting included no representation from entities that held only National Pollutant Discharge Elimination Systems, NPDES, MS4 (municipal separate storm sewer system) permits.

Until now, the use of integrated planning and permitting has been predominately driven by administrative orders or consent decrees instead of requirements in NPDES permits. The flexibility permits allow are better able to address the needs of individual communities as opposed to consent decrees which may result in penalties and fines when a community is unable to meet stipulations outlined within a consent decree in a specified time period. Hopefully, this needed change will be included in any future policy or guidance.

There are substantial differences in NPDES permit requirements for wastewater treatment systems and municipal MS4 permits. Most wastewater system permits include water quality based effluent limits (WQBELs) and the MS4 permits are based on the "maximum extent practicable" (MEP) approach. Integrated permits must recognize these differences and provide options for local communities and utilities to use in addressing these distinctions. Potential options could be the use of other processes found in EPA's 2006 Guidance for Assessment, Listing, and Reporting Requirements such as the Category 5R option (in lieu of a Total Maximum Daily Load (TMDL) for waters with an identified impairment listed on the 303(d) list. This framework should include an iterative process that meets the MEP standard used in traditional MS4 permits for stormwater discharges and not be held to a specific time table for improvement.

In all cases, local government agencies, businesses and residents in the affected watershed should participate in setting regional environmental priorities, aiming for the highest practicable degrees of water quality improvement. It goes without saying that the inclusion of all concerned parties in a successful integrated program requires comprehensive public education on protecting and enhancing watersheds.

However, there are elements in EPA's guidance, and legislation introduced in Congress that should be reviewed to reduce inefficient or unnecessary uses of the communities' resources:

- The strength and benefit of the integrated planning and permitting process should be in its flexibility – demonstrating receiving water quality benefits while improving the

reasonableness of all water infrastructure planning and permitting (including stormwater, wastewater, and water supply and delivery), necessary to protect people and the environment.

- Under the integrated permitting approach, the ultimate goal should not be the delisting of impaired stream segments through WQBELs, but rather delisting through monitoring, modeling, and implementation of adaptive management techniques that are in line with the MEP standard. So long as positive results are being attained within a reasonable time frame, flexibility must be paramount, with local communities driving the process and making their own choices on the best way to achieve water quality improvement goals.

- It is extremely important that any use of an integrated permitting approach does not become burdensome to public administrators to implement and/or monitor.

Financial Capabilities

The Financial Capability Assessment Framework issued by EPA in November 2014 recognizes the ever increasing financial burden on regulated communities for CWA compliance. While previous financial capability assessments focused on combined sewer system, the new guidance recognizes the cost of other municipal programs, such as sanitary sewer overflows, on-going asset management or system rehabilitation programs, separate stormwater collection systems and other CWA obligations required by state or other regulators.

APWA supports the consideration of costs for all CWA obligations during the permitting or enforcement process, including the development of a definitive affordability model or regional affordability indexes.

Also, APWA supports a priority setting process that allows governments and watershed managers enhanced flexibility in scheduling and standard-setting within the context of economic, technical and social capabilities. A priority setting framework must support water quality managers using appropriate data and tools, promoting inclusive resource protection, conducting economic and risk analyses, considering cross-media impacts and accounting for regional growth. Water quality priorities and solutions must be established regionally to best address water quality impairment from local and outside sources. The engineers, scientists and other experts should collaborate in priority setting with the general public and stakeholders to ensure long-term support for and implementation of water quality programs. Established priorities should take into consideration the need for inclusion of water recycling and expansion of protection for natural resources. Plainly, priority setting would allow communities to focus their resources on where the greatest need is, allowing for improvements in water quality where it is most needed.

I would like to close out my testimony by sharing a current case study of the Reedy River Nutrient TMDL in Greenville County, South Carolina

Greenville County is located in the upper piedmont area of South Carolina. It encompasses 795 square miles and has an estimated population of over 490,000 residents. Three major rivers have

their headwaters in Greenville County – the Saluda, the Reedy and the Enoree. The Reedy River actually flows through the City of Greenville and is the focal point for the re-development of the downtown area. Greenville was also the center of the textile industry for many years and many of the textile mills were located on or adjacent to the Reedy River.

The South Carolina Department of Health and Environmental Control (SCDHEC) completed the process of promulgating numeric nutrient criteria for its waters with the adoption of numeric nutrient criteria for lakes of forty acres or more in the 2001 triennial review of the water quality standards regulation--South Carolina Regulation 61-68, Water Classifications and Standards (R.61-68). These criteria created a "one size fits all" scenario without regard to the assimilative capacity of the waterbody or its designated use. SCDHEC also scaled back its monitoring program in 2008 due to budget cuts which further impacted their programs.

One lake affected was Boyd Mill Pond located on the Reedy River. Based on periodic monitoring data and emphasis following an algal bloom in the Reedy River Arm of Lake Greenwood, the SCDHEC began the process of developing a phosphorous TMDL for Boyd Mill Pond. With very limited data and many assumptions, SCDHEC released the draft TMDL. During this period, the three NPDES permit holders affected by the TMDL – Greenville County, City of Greenville and Renewable Water Resources (ReWa) immediately questioned the results of the modeling effort and the waste load reduction requirements.

The three permittees were willing to go to court to challenge the requirements but they understood the importance of water quality to their citizens and customers and decided to pursue the Category 5R option (in lieu of a TMDL) for waters with an identified impairment and invest the funds that they would have spent on litigation, on developing an integrated planning process to achieve the water quality goals in lieu of the requirements of a TMDL. Currently, several committees and outreach groups are working towards those goals through a coalition under the umbrella of the Reedy River Water Quality Group (http://cleanreedy.org).

This 5R effort should be a success story that other communities will want to study to see how they can implement a similar process to address their water quality issues. This is a great example of a group of affected permittees working together to solve a water quality issue.

In Conclusion

In closing, local governments and utilities need flexibility in meeting their water quality issues in a reasonable and financially prudent manner. We need a better balance, and recognition that water quality issues are not the only issues that affect the public health and safety in our communities. Public Works professionals are up to the challenge of satisfying community needs with limited resources. We encourage the Committee to continue to work on the integrated planning and permitting effort to ensure scarce taxpayer funds are well-spent and communities' water resources are protected. APWA and its members stand ready to be a resource to you and to assist with this process. Thank you.

RESPONSE FROM WILLIAM E. SPEARMAN, III TO THE QUESTION FOR THE RECORD

THE HONORABLE GRACE F. NAPOLITANO, RANKING MEMBER

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

HEARING ON IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING

MAY 18, 2017

Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?

The question of the applicability of a 5-year NPDES permit is an interesting topic. As an aside, this question is similar to the path forward for integrated planning and permitting that highlight the need for a modernization of the Clean Water Act.

In considering the economic and water quality impacts of longer terms for NPDES permits, there are several issues that should be addressed. First, there is definitely a difference in the NPDES permits issued to industrial dischargers and publically-owned treatment works (POTWs) and those NPDES permits issued to municipal separate storm sewer systems (MS4s). For industrial and POTW-permitted discharges (not affected by TMDLs or other administrative orders or consent decrees), the effluent limits are based on the assimilative capacity of the receiving water body and its designated use. Therefore, unless something changes either with the waterbody, treatment process, etc., the 5-year permit period may not be needed. However, a longer permit period should be accompanied by a program similar to the Capacity, Management, Operation and Maintenance (CMOM) program that includes a management plan with a schedule for completing an evaluation and updates to the system. This management plan should also include a robust monitoring program by the discharger to ensure the reported discharge parameters are actually representative of the actual discharges and that the designated use of the waterbody is being met. The regulators, EPA or State Water Quality Agencies, could then audit the progress in meeting the management plans. However, if there are issues with the water quality in the receiving water bodies as evidenced in the biennial 303(d) listing, the permits should be reviewed and re-opened as necessary to protect water quality.

In the case of the MS4 permits, the 5-year permit cycle provides a time schedule for the development of the stormwater management plan and a way to measure the permittees progress in accomplishing the tasks in the plan. This time could be extended but in most cases the review of these programs are carried out either through State or EPA audits and not through a review of the annual reports that the permittees submit. In the regulations for the Phase I and Phase II permits, there were definitive areas and/or minimum control measures (MCMs) that were to be addressed in the stormwater management plans. However, the EPA and the States have used the permit renewal process to add additional requirements that, in many cases, are based on guidance that is not supported by the regulations. The 5-year cycle appears to work well from a management plan perspective and provides flexibility to the permittee in addressing the permit requirements.

The other issue that permittees are currently experiencing is the backlog of expired permits that the regulators are working through. This is the result of increased numbers of permits associated with the MS4 program, reduced staffing at the State level following the Great Recession, adding additional requirements to permits that are not supported by the regulations, and other factors. While a longer permit period may appear to reduce this backlog, it may just "kick the can further down the road".

The real solution may be the addition of detailed management plans as part of the permit requirements that have measureable goals, time schedules and financial commitments. These plans can then be audited and reviewed to measure the water quality effects and impacts.

Thank you for this opportunity to comment and please contact me if you have any questions or need additional information.

TESTIMONY OF
LAWRENCE M. LEVINE
SENIOR ATTORNEY
NATURAL RESOURCES DEFENSE COUNCIL

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

HEARING ENTITLED
"BUILDING A 21ST CENTURY INFRASTRUCTURE FOR AMERICA:
IMPROVING WATER QUALITY THROUGH INTEGRATED PLANNING"

MAY 18, 2017

Good morning Chairman Graves, Ranking Member Napolitano, and members of the Subcommittee. I am Lawrence M. Levine, senior attorney in the Water Program at the Natural Resources Defense Council (NRDC). I appreciate the opportunity to testify today on behalf of NRDC.

Summary of Testimony

The title of today's hearing focuses on "integrated planning" as a tool to address our nation's undisputed need to improve our municipal water infrastructure. In my testimony today, I would like to emphasize the proper role of integrated planning to prioritize investments in municipal wastewater and stormwater infrastructure, and distinguish it clearly from approaches that would roll back our bedrock laws that protect public health and the environment. Further, I would like to call the Subcommittee's attention to the broader context in which discussions of integrated planning must occur – the need for increased water infrastructure investment at all levels of government to ensure municipal Clean Water Act (CWA) compliance, and the need to fund that investment in ways that ensure affordable access for all to safe and sufficient water, wastewater, and stormwater services.

Specifically, NRDC recommends:

- Integrated planning under the Environmental Protection Agency's (EPA) 2012 Integrated Planning Framework should be used appropriately, as an important tool for achieving cost-effective municipal compliance with essential Clean Water Act requirements. This will facilitate consideration of all of a municipal CWA permittee's obligations in an integrated fashion to prioritize and sequence investments in ways that maximize public health and environmental benefits.
- Integrated planning must be used in service of meeting clean water goals as expeditiously as possible. The concept of integrated planning and improved assessment of communities' "financial capability" must not be distorted to undermine our bedrock laws that protect public health and the environment. We strongly oppose H.R. 465, the Water Quality Improvement Act of 2017, which violates these principles.
- Financial capability assessments, when used to inform the development of compliance schedules, must ensure that permittees take advantage of opportunities to improve the affordability of compliance for ratepayers, and especially for low-income households, before cost concerns are considered as grounds for extending compliance schedules. Such assessments must also account for the benefits of clean water and green infrastructure, not only the costs of compliance.
- Federal actions to promote integrated planning should be accompanied by local, state, and federal actions to ensure: (i) equitable generation of sufficient local revenues to sustain adequate capital and operating budgets for municipal water, wastewater, and stormwater utilities; and (ii) vastly increased – and vastly more effective – federal and state investment in municipal water infrastructure.
- Specific federal actions that should accompany integrated planning include:
    - establishing a federal Low Income Water and Sewer Assistance Program, similar to the existing Low Income Home and Energy Assistance Program, to help low-income households pay for essential water, wastewater, and stormwater services, and supporting the creation and expansion of complementary programs at the state and local levels;
    - promoting local rate structures that equitably generate local revenues;
    - promoting best practices for asset management, as well as cost-effective solutions like green infrastructure and water efficiency, which reduce costs for all customers;
    - changing the cap that Congress places on the amount of State Revolving Fund (SRF) assistance states can distribute as grants, known as "additional subsidization," in a way that provides incentives to states to invest more in water infrastructure and direct more financial support to meet low-income communities' water infrastructure needs, to increase investments in environmentally innovative projects, and to prepare our water systems for the uncertainties of operating in a future defined by the impacts of climate change; and
    - tripling the current annual appropriations to the Clean Water and Drinking Water State Revolving Funds (the SRFs) and directing the additional funds to hardship communities, lead service line replacement (notoriously highlighted by the tragedy in

Flint, Michigan), water efficiency, green infrastructure, source water protection, nutrient reduction, water loss control, and climate resilience.

The United States Must Significantly Increase Investment in Municipal Water Infrastructure to Protect Public Health and the Environment

First-class infrastructure to protect clean water and public health is among our most important – and most basic – needs as a nation. Across the country, America's municipal wastewater and stormwater infrastructure is outdated and failing due to decades of deferred maintenance and a failure to implement up-to-date pollution control technologies. Far too often, untreated or insufficiently treated sewage and polluted runoff from cities and suburbs makes our rivers, bays, beaches, estuaries, and other inland and coastal waters both unsafe for human use and too degraded to support the fisheries and natural habitat on which we all depend for sustenance, recreation, and natural flood mitigation. Water quality in and downstream of urbanized areas is too degraded to meet water quality standards established under the Clean Water Act to protect drinkable, fishable, and swimmable waters.

Likewise, in regard to drinking water infrastructure, although many utilities have substantially improved treatment in recent years, our failure to invest adequately in water infrastructure means that, in too many cases, the public is still drinking water containing contaminants that pose serious health risks. We remain at risk from lead, arsenic, bacteria and other pathogens, cancer-causing disinfection byproducts, the rocket fuel component perchlorate, and many other regulated and unregulated contaminants. One very visible manifestation of failing infrastructure is the estimated 240,000 water main breaks per year.[1] Even more water is lost to unseen leaks and breaks that never reach the surface. This not only wastes enormous amounts of precious water and causes serious damage to roads and property, it also can pose significant public health risks. Particularly when water mains are close in proximity to sewer lines, fecal contamination can get into the drinking water after a rupture or pressure loss, posing a threat of causing a waterborne disease outbreak. Drinking water treatment plants, too, suffer from outdated infrastructure. Far too many continue to rely solely upon outdated treatment technologies such as coagulation, sand filtration, and chlorination. These can work well to remove some basic contaminants, like certain microorganisms, but cannot remove many of the modern contaminants, such as pesticides, industrial chemicals, pharmaceuticals, and other chemicals that are widespread in water.[2] Further, there are an estimated 6-10 million lead service lines in the U.S. that need to be replaced.

Based on data from the states, which was self-reported in 2011-2012 by local governments and utilities responding to a voluntary survey, the Environmental Protection Agency identified more than $660 billion that must be invested in water, wastewater, and stormwater infrastructure over

[1] American Society of Civil Engineers, *2013 Report Card for America's Infrastructure*, http://www.infrastructurereportcard.org.

[2] NRDC, "Report Finds Deteriorating Infrastructure, Pollution Threaten Municipal Drinking Water Supplies," 2003, https://www.nrdc.org/media/2003/030611; Erik Olson et al., NRDC, "What's on Tap?" 2003, https://www.nrdc.org/sites/default/files/whatsontap.pdf; Brian Cohen and Erik Olson, "Victorian Water Treatment Enters the 21st Century," NRDC, 1995.

the next 20 years to meet current environmental protection and public health needs ($271 billion for sewage systems and stormwater and $384 billion for drinking water).[3] EPA's reports acknowledge these are under-estimates, due to incomplete survey responses and limitations in the survey methodology. The Value of Water Coalition – which includes drinking water and wastewater utilities and their national associations – estimates a far greater need: at least $123 billion per year over the next decade to achieve a good state of repair.[4] Yet aggregate capital spending on water infrastructure at the local, state, and federal level currently falls far short of this need, at just $41 billion per year.[5] These numbers do not include the $30 to $40 billion that the American Society of Civil Engineers has estimated it would take to replace lead service lines around the country.[6]

Moreover, this shortfall does not account for additional improvements needed to make the nation's drinking water, wastewater and stormwater systems more resilient to the challenges posed by the impacts of climate change. The national associations representing wastewater and drinking water utilities estimate that impacts of climate change could add between $448-$944 billion to the nation's water infrastructure needs through 2050.[7] These impacts include disruption of water supplies from drought; potential for damage to treatment facilities and collection and distribution systems from floods, hurricanes, and coastal storms; and the growing threat of inundation and resulting loss of facilities attributable to rising sea levels.

As the need for investment has grown, the share of federal contribution to water infrastructure spending has fallen significantly over the past 30 years.[8]

We must increase our investment now to address this enormous outstanding need – by expanding existing State Revolving Funds, leveraging additional investment by states and local governments, and exploring new and innovative funding sources, and. This additional funding should encourage natural and nature-based infrastructure solutions for water system needs, including source water protection, floodplain restoration, water use efficiency, and stormwater retention and infiltration – all of which offer wide-ranging benefits to communities. It should also support infrastructure projects that are designed, sited, and built with the full consideration of the future impacts of climate change.

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[3] EPA, *Drinking Water Infrastructure Needs Survey and Assessment, Fifth Report to Congress* (Apr. 2013), available at https://www.epa.gov/sites/production/files/2015-07/documents/epa816r13006.pdf; EPA, *Clean Watersheds Needs Survey, Report to Congress* (Jan. 2016), available at https://www.epa.gov/sites/production/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf.

[4] Value of Water Campaign, *The Economic Benefits of Investing in Water Infrastructure* (2017), available at http://thevalueofwater.org/sites/default/files/Economic%20Impact%20of%20Investing%20in%20Water%20Infrastructure_VOW_FINAL_pages.pdf.

[5] *Id.*

[6] American Society of Civil Engineers, *Failure to Act: Closing the Infrastructure Investment Gap for America's Economic Future* (2016), available at http://www.infrastructurereportcard.org/wp-content/uploads/2016/05/ASCE-Failure-to-Act-Report-for-Web-5.23.16.pdf.

[7] National Association of Clean Water Agencies (NACWA) and Association of Metropolitan Water Agencies (AMWA), *Confronting Climate Change: An Early Analysis of Water and Wastewater Adaptation Costs* (2009), available at http://www.amwa.net/galleries/climate-change/ConfrontingClimateChangeOct09.pdf.

[8] Value of Water Campaign, *The Economic Benefits of Investing in Water Infrastructure* (2017).

Increasing our infrastructure investments will yield both environmental and economic benefits for our communities. It is estimated that $188.4 billion spent on water infrastructure investments over a 5-year period would yield $265 billion in economic activity and create 1.9 million jobs.[9] EPA found similar results for economic stimulation and job creation, determining in 2010 that the Clean Water State Revolving Fund had leveraged more than $74 billion in water infrastructure investment, creating 1.4 to 2 million jobs for the U.S. economy since 1988.[10] And a more recent analysis found that investing the estimated $82 billion per year in water infrastructure needed to fix the nation's pipes and water treatment plants could create $220 billion in annual economic activity and result in 1.3 million jobs annually.[11]

Integrated Planning, When Used Properly, Can Be a Valuable Tool for Compliance with Existing Clean Water Act Requirements

Integrated Planning, as set forth in EPA's 2012 Integrated Municipal Wastewater and Stormwater Planning Approach Framework ("Framework"), encourages communities to look at all of their CWA compliance requirements holistically and identify ways to sequence investments to attain the greatest health and environmental benefits, in the least amount of time, and use approaches like green infrastructure that save both money and time by addressing more than one regulatory requirement simultaneously. A central principle of the Framework is that integrated plans must ensure compliance with existing (and any new) Clean Water Act requirements.

When used properly, this is a smart approach for communities willing to invest in innovative solutions while maintaining fundamental protections for clean water and public health. For example, many cities are already using green infrastructure, to address sewer overflows and stormwater pollution at lower cost if they were to rely exclusively on traditional, "gray" infrastructure solutions. Green infrastructure solutions – such as green streets, roadside plantings, rain gardens, green roofs, and permeable pavement – serve both water quality goals and broader urban sustainability goals, such as cleaner air and healthier communities, creating opportunities to tap into non-traditional funding sources to support water infrastructure investment. Green infrastructure, as a form of distributed infrastructure, also allows communities to leverage private investment, on private property, to manage runoff on-site before it ever enters public sewer systems.

Further, where water scarcity is – or will in the foreseeable future become – a fact of life, green infrastructure can augment local water supplies by infiltrating rainwater to replenish aquifers, or by harvesting it for reuse, often (as with landscape irrigation) in place of expensive municipal supplies treated to drinking water standards. Indoor water efficiency provides another example of an integrated approach that helps meet a community's wastewater and drinking water infrastructure needs. Reduced indoor water use means reduced source water, treatment, and

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[9] Rockefeller Foundation, American Rivers, and Economic Policy Institute, *Water Works* (2011) at 24, available at https://www.epi.org/publication/water-works-infrastructure-report/.

[10] EPA, *Clean Water State Revolving Fund Programs Annual Report* (June 2010), available at http://water.epa.gov/grants_funding/cwsrf/upload/2009_CWSRF_AR.pdf.

[11] Value of Water Campaign, *The Economic Benefits of Investing in Water Infrastructure*, supra.

conveyance costs for drinking water utilities and their customers. It also means reduced flow into wastewater collection and treatment systems, providing opportunity for cost savings to wastewater utilities and their customers and, in some cases, reducing sewage overflows during wet weather.

When considering an appropriate schedule of compliance for a municipal permittee – whether under an integrated plan or in any other context when immediate compliance with water quality standards is not possible – a community's financial capability to implement water infrastructure improvements is one among several relevant factors. Under the Clean Water Act, a compliance schedule must, among other things, ensure ultimate compliance with water quality standards "as soon as possible" and provide enforceable interim milestones to ensure accountability for steady progress.[12] Thus, while the cost of compliance is a relevant consideration, it must not be used as an excuse either to defer real progress in meeting Clean Water Act requirements or to avoid accountability for meeting them at all. Likewise, the "flexibility" promoted by the Framework is not flexibility to weaken Clean Water Act requirements, but rather to prioritize and sequence a permittee's compliance efforts within the boundaries of a lawful compliance schedule.

Legislation to Promote Integrated Planning Must Not Roll Back Existing Clean Water Act Protections

One of the bills pending before this Subcommittee, H.R. 465, the Water Quality Improvement Act of 2017, would distort the integrated planning concept by using cost as an excuse to roll back Clean Water Act protections. Despite its title, the bill does not address how to improve the water quality of America's rivers, bays, beaches, estuaries, and other inland and coastal waters. Instead of helping municipalities secure the funds they need to meet Clean Water Act standards, H.R. 465 would excuse non-compliance – or actually lower the bar to compliance. This would perpetuate, not solve, the deficiencies in our municipal clean water infrastructure.

H.R. 465 allows utilities to claim that the cost of cleaning up pollution is too great and, therefore, that they need not do what is necessary to meet Clean Water Act standards for fishable, swimmable, drinkable waters. Under H.R. 465, the perceived cost of cleaning up pollution trumps the value of human health and the economic costs that pollution imposes upon our communities. The bill ignores the value of the health, environmental, and economic benefits of clean water, while failing to provide solutions that make achieving those benefits more affordable to ratepayers. It also makes it more likely that wealthy neighborhoods will have clean water, while poor neighborhoods are left behind.

H.R. 465 goes far beyond authorizing or promoting integrated planning, as described in EPA's Framework, in several ways that undercut Clean Water Act protections. First, the bill identifies "reasonable progress...towards meeting permit requirements" as a guiding principle for compliance schedules, appearing to eliminate the existing legal requirement to achieve compliance as soon as possible. Second, once an integrated plan and compliance schedule are approved, the bill allows for compliance obligations to be "modified or removed" – *i.e.*, allows the plan to be weakened – in order to "help the municipality" comply. This weakens existing law in many ways, not the least of which is to undercut the CWA's anti-backsliding requirement.

[12] *See* 40 C.F.R. §§ 122.2, 122.47.

Third, the bill allows such modifications based on a skewed analysis of "economic affordability." The bill's affordability criteria address only factors that the permittees believe will portray compliance as unaffordable, with no consideration either of factors that can make compliance less costly and more affordable or of the benefits of investing in clean water infrastructure. Fourth, the bill would require EPA to incorporate the same "economic affordability" criteria in revisions to EPA's 1997 Financial Capability Assessment guidance, thereby making them broadly applicable to municipal CWA compliance, beyond the context of integrated planning. Fifth, the bill also appears to create an end-run around compliance with existing water quality standards, which protect fishable, swimmable, drinkable waters. Specifically, it creates a new concept of "technical feasibility," which limits permittees' water quality obligations, using a process that evades the stringent procedures in existing law designed to guard against inappropriate relaxation of water quality standards.

NRDC strongly opposes H.R. 465 and likewise will oppose any bill that weakens existing clean water protections, or undermines core Clean Water Act principles, under the guise of "integrated planning." Any legislation to promote integrated planning must provide a roadmap for expeditious compliance with Clean Water Act requirements, not a license to evade those requirements.

Revisions to EPA's Financial Capability Assessment Guidance Must Take an Integrated Approach to Affordability

EPA's 1997 Financial Capability Guidance provides a methodology to assess a permittee's financial capability to achieve compliance within a given time frame. These assessments inform the development of compliance schedules for municipal CWA permittees. Any revisions to EPA's guidance – and, indeed, EPA's implementation of the existing guidance – must not focus exclusively on the costs of compliance. Rather, EPA's financial capability methodology must address actions that permittees can take to make compliance more affordable, without extending the length of a compliance schedule. It must also account for benefits of compliance – *i.e.*, the return on the community's investment in clean water.

First, EPA and state permitting and enforcement authorities should insist that municipal CWA permittees take advantage of opportunities to improve affordability for low-income households, and for all ratepayers generally, before considering cost "burdens" as grounds for extending compliance schedules. This includes the use of more equitable rate structures and customer assistance programs to reduce the water, sewer, and stormwater bill paid by (or passed along through rent to) low-income households. This also includes opportunities to reduce capital and operating costs through water efficiency programs, policies and incentives that increase the use of green infrastructure on private property, improved asset management, and other appropriate measures.

Second, any financial capability assessment must account for benefits, not only costs. Compliance obligations are not punitive, and should not to be viewed as liabilities. Rather, Clean Water Act compliance is for the benefit of communities, supporting our national goals of fishable, swimmable, drinkable water for all. Therefore, EPA's methodology must account for

the economic, public health, and environmental benefits associated with improved water quality, as well as the broader benefits associated with green infrastructure solutions.

Congress, State and Local Governments, and Utilities Should Address Affordability Concerns Through Customer Assistance to Low-Income Households, Equitable Generation of Local Revenue, and Other Strategies That Reduce Costs for All Ratepayers Without Sacrificing Clean Water Protections

We do not want to have in this country a two-tiered system where the wealthy get water that is clean and safe for their families, and the less well-to-do get second-class water, wastewater, and stormwater systems that pose risks to their health and environment.

Rather, we need to create a system that ensures that all communities *can* afford to upgrade their water infrastructure. At bottom, the question is not how do we make water, sewer, and stormwater services cheap, but how do we make it so that everyone has affordable access to clean, safe, and sufficient water and sanitation for their families and their communities.

Water and wastewater utility rates have been increasing at about twice the rate of inflation for approximately the last 15 years.[13] It is anticipated that rates will continue to increase as the bill for overdue investment in our water infrastructure comes due. Legitimate and growing concerns have been raised about the "affordability" of water/sewer bills for low-income households, both now and into the future.

The issue of affordability must be tackled directly, and must not be used as an excuse to defer progress toward meeting Clean Water Act and Safe Drinking Water Act standards. As stated above, the answer to cost concerns must not be to move the goalposts for protecting human health and the environment. Rather, we must make the necessary investments to achieve fishable, swimmable, drinkable water for all communities, while *simultaneously* ensuring that the costs of the infrastructure improvements are allocated fairly and without undue burden on residents least able to afford it. We must act to ensure that the local share of these costs is affordable to communities and that the necessary local revenues are generated without undue burdens on low-income households.

Presently, neither the federal government, the states, nor most utilities have addressed affordability of water and sewer service through any type of customer assistance programs. This situation differs markedly from the energy utility context, where such programs are commonplace (albeit not always adequately funded).

In a recent review of 795 water and wastewater utilities,[14] EPA found that 29 percent of them offered at least one type of customer assistance program. But 71 percent of the utilities surveyed offered no customer assistance program whatsoever, sidestepping responsibility to provide a

[13] American Water Works Ass'n and Raftelis Financial Consultants, *2016 Water and Wastewater Rate Survey* (2017), p.89, available online at https://www.awwa.org/store/productdetail.aspx?productId=61841567.

[14] EPA, Office of Wastewater Management, *Drinking Water and Wastewater Utility Customer Assistance Programs* (April 2016), available online at https://www.epa.gov/sites/production/files/2016-04/documents/dw-ww_utilities_cap_combined_508.pdf.

basic safety net to ensure that the most vulnerable populations continue to receive an essential service. Moreover, of the customer assistance programs identified, about half offered only short-term relief for customers facing temporary financial hardship, or "flexible" payment terms to customers in arrears or customers wishing to adjust the timing of future bills. Other programs offered "bill discounts" or "lifeline rates," which provide a long-term reduction in low-income customers' bills, similar to programs that are commonplace among energy utilities. A small number provided targeted water efficiency assistance to help customers reduce bills by using less water.

NRDC believes that more widespread use of customer assistance programs, as well as new approaches, are needed to maintain affordability for the most disadvantaged members of our communities. A combination of federal, state, and local actions are needed to reconcile the utilities' need to raise sufficient revenue with the need to maintain the affordability of essential levels of water and wastewater service.

Several policy mechanisms, described briefly below, hold promise for improving water and sewer affordability. NRDC's State Revolving Fund proposal, discussed in the final section of this testimony, could be used to support most or all of these approaches. We also strongly support pending legislation, H.R. 2328, which would create a pilot Low Income Water and Sewer Assistance Program, similar to the existing Low Income Home and Energy Assistance Program, to help low-income households pay for essential water, wastewater, and stormwater services. We recommend that such a program be nationwide, not only a pilot, consistent with the long-standing recommendation of EPA's National Drinking Water Advisory Council's Affordability Work Group, comprised of representatives of utilities, cities, state water agencies, tribes, academia, and consumer, public health, and environmental organizations.[15] There is now growing support for such a program among these constituencies and others.

Our specific, additional recommendations are as follows:

1. *Infrastructure grant programs:* The federal government and the states should significantly increase state and federal grants for water and wastewater infrastructure – and help utilities with limited capacity more easily access existing financial assistance programs. Grant programs should emphasize aid to communities with low median household incomes, as well as communities with high income inequality and large numbers of low-income households.
2. *Customer assistance programs:* At the local, state, and federal levels, there is a need for increased use of (and dollar amounts dedicated to) customer assistance programs. These programs subsidize or cap water and sewer bills for low-income homeowners and affordable multi-family housing owners, and provide other forms of targeted assistance, such as direct installation of appliances and fixtures that save water and lower customer

[15] National Drinking Water Advisory Council, Affordability Work Group, Recommendations of the National Drinking Water Advisory Council to the U.S. EPA on its National Small Systems Affordability Criteria (July 2003), available online at https://www.nclc.org/images/pdf/energy_utility_telecom/water/recommendations_july2003.pdf.

bills. As noted above, H.R. 2328 provides a good start for the federal government to jump-start these programs, but state and/or local programs are also necessary.

3. *Equitable rate structures:* Utilities should adopt rate structures that raise revenue with greater equity among users, such as seasonal or tiered rates for water, volume-based pricing for wastewater, and stormwater charges based on the burden a customer places on the public storm sewer system. Investor-owned drinking water utilities are subject to rate regulation by state public utility or public service commissions or boards, which can use their authority to drive the use of these equitable rate structures. The majority of drinking water utilities, and nearly all wastewater and stormwater utilities, are not subject to rate regulation by the states. Federal and state policies should promote and provide incentives to adopt these equitable rate structures, which allow communities to generate revenues needed for water infrastructure investment without unduly burdening low-income households.
4. *Improved approach to evaluating "financial capability":* As described above, Clean Water Act permitting and enforcement authorities should insist that municipal CWA permittees take advantage of opportunities to improve affordability for low-income households before EPA and states will consider cost "burdens" on low-income residents as grounds for extending compliance schedules.
5. *Improved asset management generally:* Some Clean Water Act permits and enforcement orders, or state regulations, require utilities to develop and implement asset management programs. Sound asset management practices hold costs down for everyone in the long run, since preventive maintenance/repair on a regular cycle is far cheaper than reactive maintenance/repair when something breaks or greatly exceeds its useful life. Federal and state policy should do more to promote or require these asset management programs.
6. *Increased adoption of cost-effective solutions like green infrastructure and water efficiency:* Water, wastewater, and stormwater utilities and local governments should expand the use of green infrastructure and water efficiency strategies to more cost-effectively meet their needs, mitigating costs for all customers.

Congress Should Increase the Size and Improve the Deployment of State Revolving Fund Appropriations, While Providing Incentives Larger State Investments in Water Infrastructure

NRDC recommends a combination of new federal funding and changes in federal policies that would provide incentives for states to invest more in water infrastructure while providing more financial support to meet low-income communities' water infrastructure needs, increasing investments in environmentally innovative projects, and preparing our water systems for the uncertainties of operating in a future defined by the impacts of climate change.

The federal government provides critical support to help communities meet their water infrastructure needs through the Clean Water and Drinking Water State Revolving Funds (hereafter "CWSRF" and "DWSRF," or collectively "the SRFs"). Since their inception, the

SRFs have provided $138.9 billion to local communities, almost all of which has been in the form of low-interest loans.[16,17]

Congress appropriates funding each year, which is distributed by USEPA to states according to a needs-based formula. States are required to provide a minimum 20 percent match to the annual federal contribution. Many states only invest the minimum match each year, relying on their share of annual federal appropriations to incrementally grow their SRFs' financial capacity. This approach is insufficient to meet the growing water infrastructure needs of communities in those states. But some states do much more to leverage their existing SRF programs and provide more assistance to communities, simply by making use of the full range of financing mechanisms the SRFs are authorized to support under state and federal law. As shown below, these states include Ohio, Indiana, Texas, New York, and Massachusetts, among others.

The SRFs can provide financial support through a variety of mechanisms including:[18]

- low-interest or no-interest loans,[19]
- the purchase of debt,
- loan guarantees or municipal bond insurance if this would improve the credit for the local obligation,
- revenue or security for state issued bonds that are deposited back into the SRF,
- loan guarantees to establish local revolving funds that are used for purposes identical to the state's CWSRF,[20] and
- loans where the principal and interest can be forgiven, effectively allowing the SRFs to issue grants, also known as "additional subsidization" or "subsidized assistance."[21]

If existing SRF financing mechanisms that are currently authorized in statute, like the ability to issue bonds and provide loan guarantees, were more widely deployed by the states, new capital could be mobilized to meet the nation's water infrastructure needs.

NRDC has developed the proposals below to spur states and communities to take advantage of the full range of financial assistance that the SRFs are able to provide. We also propose a major increase in annual SRF appropriations, with a priority on important categories of projects that have typically received insufficient attention from state SRF programs. Both increased funding

[16] Since 1987 the CWSRF has provided $111 billion to communities, https://www.epa.gov/cwsrf.

[17] Since 1996 the DWSRF has provided $27.9 billion to communities, https://www.epa.gov/drinkingwatersrf/how-drinking-water-state-revolving-fund-works#tab-1.

[18] For CWSRF see 33 U.S.C. 1383(d) and for DWSRF see 42 U.S.C. 300(j)-12(f).

[19] Loan terms can be for up to 30 years under the CWSRF and 20 years under the DWSRF.

[20] Local revolving loan funds are not eligible for support from DWSRFs.

[21] States are allowed to provide "additional subsidization" to SRF applicants in the form of forgiveness of the principal and interest on SRF loans, grants, or negative interest rate loans. The amount that states can provide in additional subsidization is capped at 30 percent of a state's annual share of Congressional SRF appropriations.

and better deployment by states of available funds are necessary to meet our water infrastructure investment needs.

First, Congress should create incentives for more states to contribute additional resources to their SRFs, beyond the money given to them by the federal government and their minimum 20 percent state match. NRDC wants to see states use their SRFs more creatively, by investing more of their own resources, by providing assistance in the form of loan guarantees, and by distributing more funding as grants to low-income communities and for environmentally innovative projects, like green infrastructure and water efficiency.

This could be accomplished by changing the cap that Congress places on the amount of assistance that states can distribute as grants, known in SRF circles as "additional subsidization." Under the Drinking Water SRF, hardship communities are eligible for additional subsidization.[22] Under the Clean Water SRF, those communities, as well as communities that will use SRF funds to promote green infrastructure, water efficiency and reuse, and climate resiliency, are eligible for additional subsidization.[23] Under current law, states can only provide subsidized assistance (*e.g.*, grants) up to an amount that equals 30 percent of their annual federal SRF funding and they are barred from providing more, even if they have the financial capacity to do so.[24] In some states, the cap effectively may keep SRF programs from deploying 100 percent of their available funds, whether by grants or loans; funds available for loans can go unclaimed when municipalities lack the credit to borrow even at SRF-subsidized interest rates.

NRDC recommends amending the SRF statutes to base the cap on additional subsidization on a 10-year rolling average of how much states have invested in their SRF above and beyond their minimum (20 percent) federal match requirements. This reform would provide incentives for states to contribute more funding to their SRFs and allow them to distribute most of those dollars to hardship communities and communities that want to promote green infrastructure, water efficiency and reuse, and climate resiliency. We also recommend that eligibility criteria for additional subsidization under the DWSRF be amended to reflect similar project-specific criteria as currently exist in the CWSRF.[25]

Twenty states could immediately benefit from changing the cap, including Ohio, Indiana, Texas, New York, and Massachusetts. These twenty states have contributed, on average, nearly $70 million per year over the last ten years, on top of the minimum 20 percent SRF match required to receive new federal funding. Currently those states can, on average, only provide $11.2 million of grant assistance each year. Under our proposal, these states would be able to distribute, on average, an additional $69.3 million per year as grants or other forms of subsidized assistance for eligible projects.

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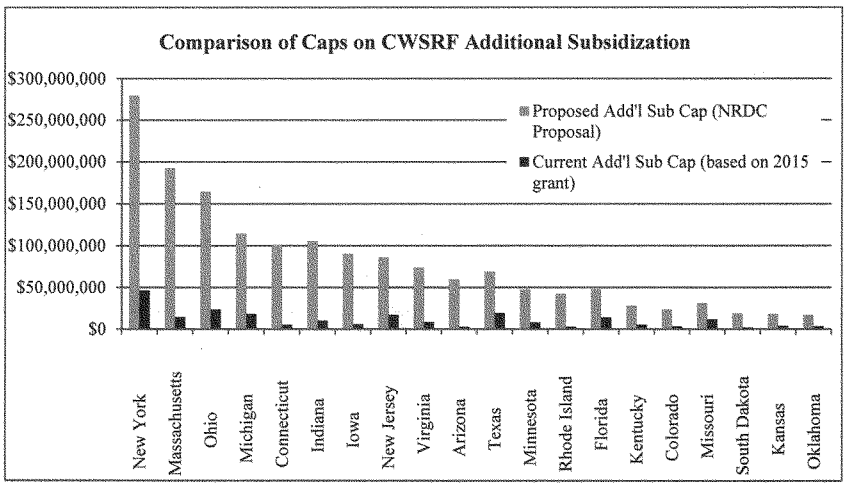
[22] 42 USC 300j-12(d).

[23] 33 USC 1383(i)(1).

[24] 42 USC 300j-12(d)(2) and 33 USC 1383(i)(3).

[25] 33 USC 1383(i)(1)(B).

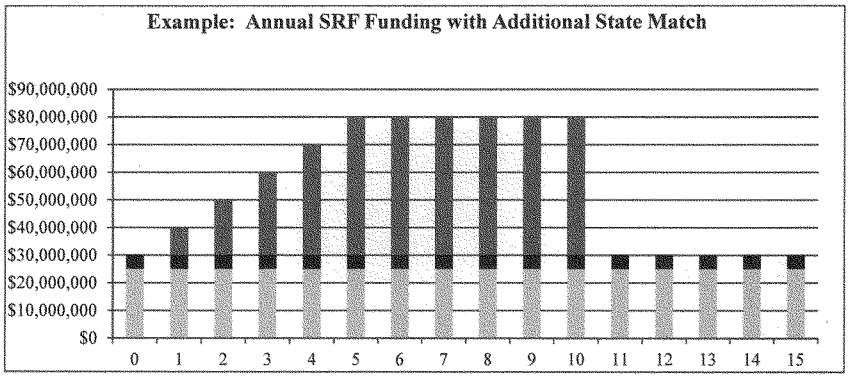
The graph below shows how states that have a history of contributing more than the minimum 20 percent match to their CWSRF could benefit from a statutory change in the definition of "additional subsidization" envisioned by NRDC.



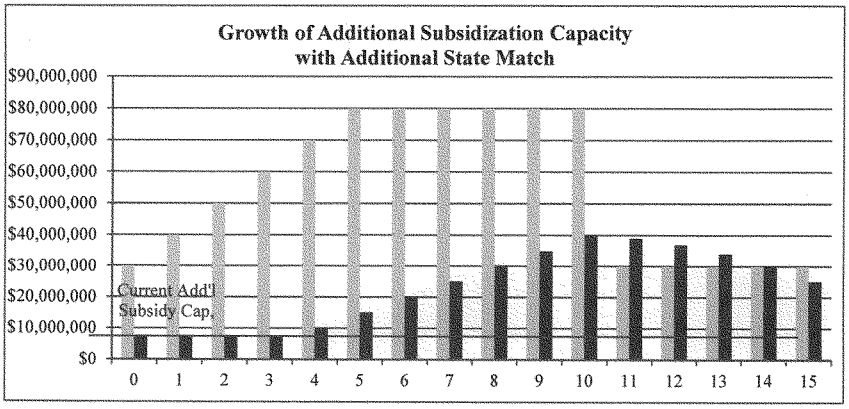
Graph 1: Many states routinely deposit more than the minimum 20 percent match to their CWSRF. The states above have deposited revenues from bond sales, growing their CWSRF's financial capacity. These states could immediately be able to provide more in subsidized assistance to eligible SRF projects.

Even states that have not regularly made increased SRF contributions would be able to benefit in short order. A theoretical state that received a $25 million capitalization grant each year from USEPA would provide a minimum $5 million match. If that state contributed an additional $400 million over ten years (the dark gray bars in the graph below) through bonding or direct appropriations, it would not only grow its SRF's overall financial capacity, but under NRDC's proposal, would be able to provide more grant funding to eligible recipients.

Significantly, this ability to provide more grants to communities – not just loans – can provide a valuable incentive for states to use their SRFs as a source of revenue or security for state-issued bonds, the proceeds of which would be deposited back into the SRF to support water infrastructure projects. A state's SRF has a credit rating that is independent of (and may often be higher than) the state's own bond rating, which means that bonds issued against the SRF can be a low-cost way for the state to raise funds for water infrastructure investment. With an increased cap on additional subsidization, states would be able to borrow against the SRF at low cost and use the proceeds for grants to eligible projects – not only for loans. The ability to offer grants makes such bonding a more politically attractive proposition, while enabling states to provide more assistance to communities that have limited financial capacity to take on new SRF loans.



Graph 2: A simple model of how a state might add $400 million over ten years to an SRF. Light grey represents the annual USEPA capitalization grant, black is the state's minimum 20 percent match, and the dark grey represents additional state investments.



Graph 3: How that $400 million (light grey bars) could increase the amount of subsidized assistance under NRDC's proposal, which would base the cap on a 10-yr rolling average of state contributions that exceed the 20 percent minimum SRF match. The cap on subsidized assistance would be based on either the existing cap (30 percent of the USEPA capitalization grant) or the proposed cap based on the 10-year rolling average, whichever is higher.

Second, the federal government should increase its long-term commitment to water infrastructure funding through the SRFs. However, NRDC is recommending that appropriations not simply be increased, but that those increases be targeted to a growing list of priorities that are currently under-represented in the states' portfolios of SRF assistance.

The financial support SRFs provide typically goes towards routine repair and upgrades of our nation's aging water systems, leaving very little for more innovative practices like green infrastructure, water efficiency and reuse, or climate resilient resiliency, not to mention the need to remove lead water lines that endanger the health of 18 million Americans.[26] If new federal funding is forthcoming, it should be targeted toward these kinds of projects, which currently do not get their fair share of the water infrastructure pie. NRDC recommends that Congress triple funding for the SRFs and dedicate the approximately $4 billion in new federal funding to the following kinds of projects:

- Removing lead service lines that are used by millions of Americans;
- Water efficiency, water reuse, and water recycling;
- Green infrastructure;
- Source water protection;
- Reducing nitrogen and phosphorus pollution from wastewater and stormwater;
- Reducing the amount of water that is wasted due to old, leaky water mains;
- Fixing deteriorating outdated drinking water infrastructure, especially in disadvantaged communities that cannot ensure that safe water is provided to their residents; and
- Ensuring that our water infrastructure is designed with the increased risk of droughts, floods, and other impacts of climate change.

* * * * *

Thank you for the opportunity to testify today. NRDC looks forward to working with the Subcommittee on bold and effective solutions to our nation's water infrastructure challenges.

[26] NRDC, *What's In Your Water: Flint and Beyond* (2016), available at https://www.nrdc.org/media/2016/160628.

Rep. Grace Napolitano
Ranking Member, Subcommittee on Water Resources and Environment
Committee of Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Napolitano,

Thank you for the opportunity to testify on behalf of Natural Resources Defense Council (NRDC) before the Subcommittee on Water Resources and Environment on May 18, 2017, at the hearing entitled "Improving Water Quality through Integrated Planning."

Please accept this letter as my response for the record to the question you sent me after the hearing by letter dated May 25, 2017.

You asked the following:

- *As we look at ways to modernize our clean water priorities, I would like your thoughts on extending dean Water Act NPDES permit terms from five years to ten years (or beyond).*

  In my opinion, many wastewater infrastructure projects require up to 10 years or more of planning, design and construction. Many local agencies find that they must reapply for a permit while still in the process of constructing the upgrades necessary to comply with their prior permit, and even before a project is operational. Also, a project's lifecycle can be 30, 40 or even 50 years. Local agencies contend that a five year maximum permit term creates unnecessary permit backlogs and focuses scarce resources on permit renewals rather than today's most pressing water quality problems. Local agencies further contend that longer permit terms would align permitting practices with modem realities and also facilitate watershed-based approaches for stormwater quality improvements, such as are being used in my district.

  - *Do you believe the economic and water quality benefits of providing longer terms for NPDES permits is an issue that this committee should consider?*

I and NRDC strongly believe that the five-year limit on National Pollutant Discharge Elimination System (NPDES) permits is an essential part of the Clean Water Act (the "Act") scheme that should not be altered. The requirement to revisit permit terms every five years works in conjunction with other core aspects of the Act to protect the environment and public health, and to secure the economic benefits provided by a clean and healthy environment. Five-year permit terms do not prevent the implementation of cost-effective solutions, but rather

provide a means to ensure that pollution controls will remain effective even as conditions change.

Amending the Act to allow permit terms of ten years or longer would allow dischargers to operate for at least a decade under pollution control standards that, in many instances, have long-since become outdated. Further, shutting the public out from the permitting process for at least a decade would insulate the Environmental Protection Agency (EPA) and state permitting authorities from much of the input Congress intended the public would have in the process to counteract any shortcomings in agencies' implementation of the Act. It would also limit EPA's oversight of state permitting. In states that administer the Clean Water Act permitting program under federally-delegated authority, EPA has the occasion to object to a permit as insufficiently protective of the environment and human health – and to assume responsibility for issuing the permit if the state fails to sufficiently strengthen it – only when a state issues a proposed new or renewed permit; if permit terms are extended to ten years or more, EPA would lose that once-every-five-year opportunity to ensure the effectiveness of state permits, diminishing EPA's essential oversight role.

Five-year permit terms go to the heart of the Act's regulatory scheme. A key premise of the Act is that, as environmental science and technology advance over time, the nation will make steady progress in reducing water pollution. The framers of the Act imposed a five-year limit on NPDES permit terms to ensure that discharge limits are strengthened regularly to account for updated water quality and pollution control standards that reflect the most current science and technology, as well as to account for any other relevant changes in the governing law or in our scientific understanding of water pollution and its impacts.

Specifically, the Act requires every NPDES permit to include technology-based effluent limitations, based on the "best" available pollution control methods, and water quality-based effluent limitations, as necessary to ensure compliance with water quality standards applicable to the waterbody receiving the permitted discharge. *See, e.g., Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 491-92 (2d Cir. 2005); 40 C.F.R. § 122.44. To ensure that such permit limits are strengthened regularly, the Act limits NPDES permits to "fixed terms not exceeding five years," 33 U.S.C. § 1342(b)(1)(B); requires permittees to "apply for and obtain a new permit" if they seek to continue any regulated discharges beyond the permit's expiration date, 40 C.F.R. § 122.41(b); requires EPA to revisit the national technology-based standards applicable to specific categories of discharges and classes of pollutants every one to five years, *see, e.g.*, 33 U.S.C. §§ 1311(d), 1314(a)(9)(B), 1314(b), 1314(g), 1317(a)(3), 1317(b), 1345(d)(2)(C); requires states to review and consider modification of their own water quality standards at least once every three years, *id.* § 1313(c)(1); requires states to report periodically to EPA on waters failing to meet such standards and identify pollutant discharge reductions necessary to achieve such standards, *id.* § 1313(d), which reductions must be incorporated into subsequently-issued NPDES permits, 40 C.F.R. § 122.44(d)(1)(vii)(B); and requires states to otherwise implement a "continuing planning process," 33 U.S.C. § 1313(e).

The Act's legislative history also reflects the centrality of the five-year limit on permit terms as a linchpin of this scheme. As Senator Byrd explained on the Senate floor when the 1972 Amendments unanimously passed, "[i]n order to be absolutely certain that these [pollution]

control techniques represent the latest state of the art, they will be reviewed and upgraded every 5 years." 117 Cong. Rec. 38797 (Nov. 2, 1971). *See also* S. Rep. 92-414, *as reprinted in* 1972 U.S.C.C.A.N. 3668, 3709 ("[I]ndustry will be required every five years to re-evaluate its control efforts and to apply the best technology *then* available." (emphasis added)). Again, in 1985, when Congress rejected a proposed amendment to extend the term limit for certain NPDES permits to ten years, Senator Lautenberg emphasized that "the 5-year permit term plays an important role in *improving* water quality" and "a 10-year permit provision could result in less stringent pollution control of toxic pollutants." 131 Cong. Rec. S8080-04 (June 13, 1985) (emphasis added).

The Act also relies on the active engagement of the public to ensure that its goals are achieved. As the Senate Committee Report accompanying the 1972 Amendments explained, "a high degree of informed public participation in the [pollution] control process is essential to the accomplishment of the [Act's] objectives . . . because . . . the manner in which [the Act's pollution control] measures are implemented will depend, to a great extent, upon the pressures and persistence which an interested public can exert upon the governmental process." S. Rep. No. 92-414, *as reprinted in* 1972 U.S.C.C.A.N. 3668, 3679. *See also* 33 U.S.C. § 1251(e) (Congressional statement of policy "provid[ing] for, [and] encourag[ing]" public participation). Accordingly, the Act requires, among other things, public notice and an opportunity for a public hearing before agency decisions on permit applications, 33 U.S.C. § 1342(b)(3), and an opportunity for judicial review in state court of the denial or issuance of such permits, 40 C.F.R. § 123.30. *See also* 33 U.S.C. § 1365 (authorizing "citizen suits" to enforce, among other things, permit limits against permittees).

For these reasons, NRDC urges the Subcommittee not to alter the five-year limit on NPDES permit terms. The five-year limit does not impede environmental protection, but rather advances environmental protection.

* * *

Thank you again for the opportunity to testify. NRDC looks forward to working with the Subcommittee on bold and effective solutions to our nation's water infrastructure challenges.

Sincerely,

Lawrence Levine
Senior Attorney

STATEMENT FOR THE RECORD
U.S. ENVIRONMENTAL PROTECTION AGENCY

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
UNITED STATES HOUSE OF REPRESENTATIVES

May 18, 2017

Chairman Graves, Ranking Member Napolitano, and members of the Subcommittee, thank you for the opportunity to provide a written statement for today's hearing record regarding the U.S. Environmental Protection Agency's efforts to achieve better water quality improvements through integrated municipal stormwater and wastewater planning (Integrated Planning) and other innovative approaches for meeting our infrastructure challenges. The EPA is grateful for the continued interest of the Subcommittee and of communities across the country in our efforts to promote Integrated Planning for meeting Clean Water Act obligations.

The nation has come a long way in improving water quality, public health and the environment since Congress enacted the Clean Water Act almost 45 years ago. We have improved water quality and increased public health protection in streams, lakes, bays, and other waters nationwide. However, significant water pollution challenges remain. We still face difficult and expensive challenges such as providing advanced treatment for nutrients and controlling combined sewer overflows, sanitary sewer overflows, and stormwater pollution.

Increases in impervious surfaces, aging infrastructure, declining population in rural and urban areas, and extreme events related to rainfall and drought are stressing existing infrastructure and

programs needed to fully attain Clean Water Act goals. In addition, many of our state and local government partners find themselves facing difficult financial conditions. The EPA continues to work with states and local governments to develop and implement new approaches that will achieve water quality and human health goals more cost effectively and sustain our nation's essential water infrastructure to create jobs and strengthen the economy.

In the past, the EPA, states, and municipalities have focused on each Clean Water Act requirement individually, without full consideration of all Clean Water Act requirements or how various water quality investments can be coordinated and managed as a consolidated effort. This approach may have had the unintended consequence of constraining a municipality from addressing its most serious water quality issues first. Integrated Planning offers municipalities an opportunity to meet Clean Water Act requirements in a way that allows the highest priority wastewater and stormwater projects to come first, and the EPA encourages communities to evaluate and incorporate sustainable and community first solutions, such as green infrastructure, into these efforts. After extensive public input, including a series of workshops across the country, the EPA issued the June 12, 2012 memorandum, "Integrated Municipal Stormwater and Wastewater Planning Approach Framework.[1]" The Framework explains EPA's goals in working with communities on Integrated Plans and provides communities with a guide to develop and implement effective integrated plans under the Clean Water Act.

[1] A copy of the EPA June 12, 2012 memorandum is available at: https://www.epa.gov/sites/production/files/2015-10/documents/integrated_planning_framework.pdf.

Over the past several years, the EPA has encouraged the Integrated Planning approaches described in the 2012 memorandum. During the previous administration the agency's active pursuit of flexibility within Integrated Planning has been most visible in the enforcement realm where numerous settlements have either specifically included language incorporating Integrated Planning, or otherwise incorporated the concepts in a consent decree. For example, in settlements with King County and Seattle, Washington, where the EPA and the communities are working to resolve wastewater issues, our agreements included specific provisions for developing an integrated plan that would also include stormwater considerations. In other cases, such as recent amendments to a consent decree with the Sewerage and Water Board of New Orleans, Louisiana, Integrated Planning is not called out by name, but adjustments to the decree were made to account for the multiple Clean Water Act obligations that needed to be prioritized in concert with the ongoing recovery from Hurricane Katrina. Integrated Planning elements are part of numerous consent decrees in settled cases and pending enforcement cases.

Several cities across the country have approached the agency about pursuing Integrated Planning in the enforcement context to address their wastewater obligations. These cities are enthusiastic about the opportunities to take a more holistic approach to protecting water quality. It is the intent of the EPA to encourage Integrated Planning through avenues that emphasize the importance of cooperative federalism. EPA will facilitate its regional offices working with communities to develop plans and implement compliance schedules outside the enforcement context. States and municipalities both benefit by the prioritization that Integrated Planning

allows, granting them the flexibility to direct their limited investment resources to the projects that will have the highest impact.

The Integrated Planning approach can also serve as a catalyst for an evolving National Pollutant Discharge Elimination System (NPDES) permit program. While the Integrated Planning approach is voluntary, many municipalities have developed or are developing Integrated Plans that may ultimately inform the development of conditions and requirements in their NPDES permits. NPDES permits can have an important role in Integrated Planning by setting implementation schedules that are consistent with the permittee's financial capability, allowing for adaptive management, encouraging the use of sustainable green infrastructure, and assisting in implementing trading programs. These approaches could support more sustainable solutions that provide environmental improvement more quickly. In addition, the Integrated Planning approach encourages communities to develop a public participation process which can support adaptive management and provides opportunities for buy in and support from ratepayers, elected officials and environmental groups.

The EPA is encouraged that several communities have expressed interest in developing an integrated plan that can assist the NPDES permitting authority in reissuing their permits. Several other communities have already submitted an integrated plan to their NPDES permitting authority, and we welcome the efforts of additional communities to pursue such an approach. In October of 2014, EPA awarded a total of $335,000 in technical assistance to five communities to

help them develop components of integrated plans for wastewater and stormwater management that will provide examples of how communities can develop elements of integrated plans to support Clean Water Act permit conditions. The five communities are: Santa Maria, CA; Burlington, VT; Durham, NH; Springfield, MO; and Onondaga County, NY.

Building on the success of the Integrated Planning Framework, the EPA worked with stakeholder groups such as the U.S. Conference of Mayors, the National League of Cities, the National Association of Counties, the Water Environment Federation, and the National Association of Clean Water Agencies concerning the financial challenges that communities face as they pursue the goals of the Clean Water Act. These financial challenges are a constant concern for both the EPA and the regulated community, and turning attention to these issues was a natural outgrowth of our work on Integrated Planning.

From 2012 through 2014, EPA held a series of meetings with these stakeholders to solicit their input on the financial factors impacting community investments in clean water infrastructure. As part of the EPA's continued commitment to implementing Clean Water Act objectives in a sustainable manner, the EPA issued a Financial Capability Assessment Framework ("FCA Framework") in 2014 to help communities understand the flexibility in the 1997 FCA Guidance.[2] The FCA Framework was developed with extensive public input, including input from the

[2] Kopocis, K. (2014). *Financial Capability Assessment Framework for Municipal Clean Water Act Requirements.* [Memorandum]. Washington, DC: Environmental Protection Agency. Retrieved from https://www.epa.gov/sites/production/files/2015-10/documents/municipal_fca_framework.pdf

Environmental Financial Advisory Board and the stakeholder groups previously mentioned. The FCA Framework clarifies the EPA 1997 FCA Guidance – and the flexibilities therein – for developing compliance schedules that will ensure that the financial burdens on a utility and its customers are fully and consistently considered. The FCA Framework also provides examples of the types of "additional information" cities can provide in order to demonstrate a "more accurate and complete picture" of their financial capability as is envisioned in the 1997 FCA Guidance.

Last year, Senate Report 114–70, which accompanied the 2016 Consolidated Appropriations Act, directed EPA to contract with the National Academy of Public Administration (NAPA) to conduct an independent study to create a definition and framework for "community affordability" and determine how different localities can effectively fund municipal projects. NAPA will issue a report with findings and recommendations by September 19, 2017. EPA will use the NAPA report to identify potential modifications to EPA's 1997 FCA guidance.

It is also important to emphasize the contributions that the 51 Clean Water State Revolving Fund (CWSRF) programs can and do make to financing infrastructure planning at the local and regional levels. The enactment of the 2014 Water Resources Reform and Development Act amended the CWSRF program in ways that will clarify additional avenues for communities when they make wastewater and stormwater investments – which will assist them in implementing integrated plans. For example, these amendments specifically authorize the CWSRF to finance measures to manage, reduce, and treat stormwater. Further, CWSRFs can

now provide additional subsidies to encourage sustainable planning, design and construction of wastewater infrastructure. In addition, the Act created the Water Infrastructure Finance and Innovation Act (WIFIA) program. WIFIA is authorized to provide low-cost financing for water infrastructure projects of regional and national significance, including any type of project currently eligible under the CWSRF. WIFIA received its first appropriations to cover the subsidy cost of providing WIFIA credit assistance in FY 2017.

The EPA, states and municipalities are using the flexibility in the Clean Water Act and existing regulations to apply the Integrated Planning approach to identify cost-effective and protective solutions to successfully improve water quality. As we move forward with the Integrated Planning approach, we look forward to working with this Subcommittee, our state colleagues, municipalities, and the many other partners, stakeholders, and citizens to implement it. The EPA remains committed to improvements in wastewater and stormwater management and moving toward full attainment of water quality and human health goals.

NACWA
A Clear Commitment to America's Waters

Written Testimony Submitted By:

National Association of Clean Water Agencies
1816 Jefferson Place NW
Washington, DC

Submitted for the Record of the Hearing:

Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning
May 18, 2017, 10:00 AM
2167 Rayburn House Office Building

Subcommittee on Water Resources and Environment
Transportation & Infrastructure Committee
U.S. House of Representatives

Chairman Garret Graves, Louisiana
Ranking Member Grace F. Napolitano, California

Introduction

The National Association of Clean Water Agencies' (NACWA) primary mission is to advocate on behalf of the nation's public clean water and stormwater agencies and the communities and ratepayers they serve. NACWA has nearly 300 public agency members who collectively treat and reclaim the majority of the nation's wastewater. The employees of these agencies are public servants, true front-line environmentalists, and stewards of ratepayer dollars who ensure that the nation's waters are clean, safe, and meet the strict requirements of the Clean Water Act (CWA).

We applaud the Subcommittee for holding this important hearing on the issue of clean water affordability and the U.S. Environmental Protection Agency's (EPA) Integrated Planning Framework for municipal wastewater and stormwater requirements. NACWA has played a leading role in urging communities to take advantage of EPA's integrated planning initiative.

There are a number of important bills that have been introduced in the 115th Congress in both the House and the Senate addressing integrated planning. As further discussed in the testimony below, NACWA is supportive of all the legislative efforts to advance integrated planning principles, and is deeply appreciative to all the legislators in Congress who have helped to champion this important effort.

Simply put, integrated planning allows a community to prioritize its obligations under the CWA so communities can spend their limited resources on the most pressing water quality challenges first. Integrated planning promises to provide significant and much-needed flexibility for many communities facing major federal clean water obligations and water quality challenges. In fact, since EPA's Framework was developed in 2012, more than 30 communities have initiated integrated planning efforts and a handful of communities have completed the process, benefitting from thoughtful plans tailored to their community. NACWA believes that codification of integrated planning under the CWA, as well as additional strategic policies detailed below to help address municipal affordability, will advance innovation and a focus on maximizing environmental and public health return on investment.

The Subcommittee's focus on these important issues today reflects recognition that it is time to do things differently under the CWA. In the 45 years since the law's enactment, tremendous gains have been made in controlling point source pollution, including the publicly owned treatment works (POTWs) that are managed by NACWA's members. The resulting water quality improvements have enabled millions of Americans across the country to safely access and enjoy the water resources in their communities, improved wildlife habitat, spurred new economic opportunities, revitalized waterfronts and raised property values.

Continued progress on the significant water quality challenges that remain, however, will be harder if we continue with status quo approaches under the CWA. We have addressed much of the low-hanging fruit under the CWA, but affordability challenges are now setting in. Furthermore, the CWA was not designed to address what is now the largest driver of remaining water quality impairments in the U.S., non-point source pollution. Meanwhile, the Act has created a layering of wastewater treatment and stormwater management obligations on municipalities with little room for prioritization or innovation. As a result, municipalities are grappling with major economic hardship and individual ratepayers are challenged by high sewer and

stormwater bills, yet these communities may reap relatively marginal water quality gains despite the growing investment needed to achieve them. This is, in short, a law of diminishing returns that integrated planning can help address.

For these reasons NACWA thanks the Subcommittee for its attention to these critical issues today. As the national advocates for municipal clean water agencies we look forward to continued engagement as you work to advance these issues in the 115th Congress.

Affordability Concerns and the Clean Water Act

There is little doubt that the nation's water quality has improved as a result of the CWA, yet the command-and-control nature of the statute has led to a buildup of costly regulations on the nation's communities and ratepayers. The list of costly CWA requirements is well-known—from wet weather-based requirements dealing with combined and separate sanitary sewer system overflows and stormwater run-off, to specific pollutant-based requirements such as nutrient removal, and permit limits to implement expensive total maximum daily loads (TMDLs). As regulations continue to get more and more stringent, many communities across the country have also agreed to costly enforcement-based requirements and permit terms, such as sewer overflow consent decrees that can cost individual communities billions of dollars—often to meet a single CWA requirement.

Separate and apart from regulatory requirements, municipal clean water agencies face a looming crisis with their aging network of pipes and systems. EPA's 2012 *Clean Watersheds Needs Survey* estimates that it will cost POTWs $271 billion in capital investment over the next twenty years to address the water quality objectives of the CWA. Water quality professionals widely view this as a conservative estimate.

While this needed clean water investment is driven by federal law, federal funding has declined over the past several decades. Federal funding for water and wastewater reached close to $20 billion annually in the late 1970s, but has declined since then to less than $5 billion annually in recent years (both inflation adjusted, 2014 dollars). The decline in federal funding has shifted the financial burden to local ratepayers. Local governments depend on ratepayer dollars and low-interest financing – most significantly through tax-exempt municipal bonds and the State Revolving Loan Funds – to finance critical investments.

Although local investment in the nation's water infrastructure has continued to increase, a large investment gap has grown. Utilities working to close that gap and service the debt they have taken on to make needed investments have continued to raise their rates. In fact, local ratepayers have seen the amount they pay for wastewater services rise faster than the rate of inflation for the past 15 years in a row. NACWA's 2016 *Cost of Clean Water Index*, a survey of NACWA public utility members, found that the average cost of wastewater services rose 2.6% in 2016, double the Consumer Price Index rate of inflation. In 2016, the national average amount that a single-family residence pays for wastewater collection and treatment was $479 per year ($39.92/month). Regionally and in certain communities, ratepayers can pay two to three times this amount. NACWA's 2016 *Index* indicates that clean water utilities are expecting average charges to continue to increase from 3.9 to 4.7% per year for the next five years.

A Michigan State University study published in January 2017 found that an estimated 11.9% of households in the continental U.S. already have water costs that are considered unaffordable by EPA, based on average 2014 water and sewer rates and incomes. Within the next 5 years, based on projected rate increases the researchers found that number could triple—meaning water and sewer costs would be considered unaffordable for a full 35% of households. These challenges are especially acute for smaller, often rural, communities that do not have the ratepayer base to support large investments in their water and wastewater infrastructure. Meanwhile, some municipalities are reaching debt financing limits and risk a lowered credit rating, which would lead to higher financing costs across the board for the municipality, including and beyond water infrastructure.

Consent decree requirements and associated new capital construction and debt service were among the top reasons cited as the cause of these increases. Other drivers for large rate increases include infrastructure rehabilitation and replacement, higher operation and maintenance costs, combined sewer overflow (CSO) long-term control plan compliance, and sewer system improvements to reduce sanitary sewer overflows (SSOs).

The current projection of future rate increases and expanding municipal debt loads are approaching unsustainable levels. Simply stated, absent a new approach to regulatory compliance, the future of maintaining – let alone adding to – the record of water quality gains is at risk.

EPA's Integrated Planning Framework

In June 2012, NACWA was pleased to see EPA release its *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* and initiate an effort to help local communities develop more affordable CWA compliance programs. EPA's Integrated Planning Framework offers a pragmatic yet effective path for communities to more affordably address water quality obligations.

Simply put, integrated planning allows a community to prioritize its obligations so communities can spend their limited resources on the most pressing water quality challenges first. From stormwater and wastewater to myriad other federal obligations such as drinking water and air quality, as regulations continue to evolve communities are required to devote more money and resources to comply with what are largely unfunded mandates. The funds and resources required to comply with various obligations ultimately all stem from the same base of local taxpayers and ratepayers. EPA's Integrated Planning Framework demonstrates a recognition of this burden by the Agency. But it is not only an issue of spending - the Framework puts in place a path toward greater opportunities for innovation and strategic prioritization that can usher in a smarter way of doing business: achieving net environmental benefit outcomes that protect water quality and public health at the most efficient ratepayer cost.

Key opportunities and benefits that may be realized through integrated planning include:

- Creating Efficiencies - Integrated planning allows a municipality to take a holistic look at their various environmental concerns and obligations, especially in the clean water arena. Then, working with EPA and the state, the community will prioritize its needed investments in a way that addresses the most pressing problems first. The plan may facilitate a more adaptive management approach

across the planning period, where new findings and early outcomes can be evaluated and the plan adjusted accordingly, if necessary, for a more efficient and beneficial outcome. The plan may also identify and help prioritize new opportunities to address multiple obligations and community goals concurrently; for example, the use of green infrastructure for stormwater management, which can also improve air quality and provide wildlife habitat. The overall goal is to address resource protection more comprehensively and build efficiency into the process. This may require coordination between different permits as well as multiple regulatory bodies at the national, state and local levels.

- Project Sequencing and Scheduling – Under integrated planning, municipalities are still required to meet all of their obligations under the law. However, the framework provides the flexibility to develop a schedule for addressing those obligations to better manage compliance costs, spreading the burden over a greater period of time to make the investment more affordable. This could take the form of a compliance schedule or other mechanism that allows work to extend beyond a single permit term. This also allows the community to be more strategic in ensuring compliance, avoiding enforcement actions, and pursuing funding.

Congresses' Role in Advancing Integrated Planning & NACWA Advocacy

NACWA believes that Congress has an important role in ensuring that integrated planning is more than just an acknowledgment by EPA of the need for – and possibility of – a new approach. Congress can help encourage broad implementation through the key step of codifying integrated planning. Codification will provide municipalities with far greater certainty to develop an integrated plan, which is not without cost and if done right, involves an intensive community process that may be difficult to justify without the certainty provided by law.

Codification will also affirm the use of compliance scheduling in the permit context. To function within the National Pollution Discharge Elimination System (NPDES) which has 5-year permit terms, communities with approved integrated plans need the option of seeking compliance schedules that allow work to address CWA requirements to extend beyond one 5-year permit term. Congress could also help further incentivize the adoption of integrated planning by extending NPDES permit terms beyond the current 5-year term for communities with an approved integrated plan. By allowing extended permit terms, communities who undertake the resource-intensive process of developing an integrated plan would have greater assurance that their clean water investments will be secure for longer than a 5-year permit term. Compliance schedules extending beyond a single permit term and/or longer permit terms make sense given the actual time a project takes to be implemented and yield desired results. The core of integrated planning rests in the development of an appropriate, viable, and prioritized list of investments that can be, if necessary, incorporated into a compliance schedule with clear benchmarks and milestones for tracking progress toward each of the requirements contained in the plan.

Already in the 115th Congress, several bills have been introduced that would help advance the objectives outlined above. These include H.R. 465, sponsored by Reps. Gibbs and Chabot, long-time champions for advancing these issues in the House; H.R. 2355, sponsored by Reps. Latta, David Joyce, Napolitano, Bustos,

Smucker, and Fudge; and H.R. 1971, sponsored by Rep. Smucker. NACWA believes all of these bills include important concepts to advance integrated planning principles, and applauds these Members of Congress for leading on these critical efforts to advance integrated planning. The Association is supportive of all ideas to incorporate integrated planning into the CWA, with the goal of achieving bipartisan language advancing integrated planning that can pass Congress and be signed into law.

NACWA has consistently played a leadership role in advocating for an integrated planning approach, including longstanding and related efforts over the past decades to advance a holistic watershed approach. NACWA has also played a leading role in helping get the word out about integrated planning, including hosting a series of informational workshops along with EPA's Office of Water and Office of Enforcement and Compliance Assurance, the Association of Clean Water Administrators, and the Water Environment Federation.

NACWA has also been active in urging both Congress and EPA to provide additional support for communities who want to pursue integrated planning, to help jump-start awareness of and confidence in this approach in pilot communities. Developing an integrated plan can be a timely and resource-intensive process, and federal support can help cash-strapped communities seriously consider this new model for meeting CWA obligations. In addition, federally-funded pilot communities may report back to Congress on the cost-savings and environmental benefits they experienced under an integrated plan.

EPA's Affordability Guidance

NACWA has also been a leading voice urging EPA to develop a more flexible and realistic approach to community affordability and financial capability determinations under the CWA. The Association has worked to shed light on the growing financial and compliance challenges posed by CWA regulations and remains committed to working with EPA and Congress to address affordability, a growing and acute challenge in many communities.

Currently, EPA continues to rely heavily on Median Household Income (MHI) as an indicator of community financial health. A method of evaluating the affordability of potential wastewater investments in a community based on the annual percentage of MHI that it would require of a household was established in EPA's *1997 Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development.* NACWA believes that relying on a single MHI indicator does not account for the significant and diverse fiscal constraints within a community on individual households. These constraints are brought on by demographic variables such as age of the population, unemployment rate, poverty and economic conditions in the community. Relying solely on MHI can mask the acute challenges many individuals and households within a community face. Given the critical nature of wastewater services, households may go to extreme measures to stay current on sewer bills, while municipalities confronted with high unpaid balances may be constrained in their options as they seek to avoid cutting off critical wastewater services to a home.

EPA released a Financial Capability Assessment Framework in 2014 that encouraged a broader look at community affordability beyond just MHI. While NACWA applauds EPA's work in this regard, the

Framework does not replace the 1997 Guidance, it merely supplements it. In the Fiscal Year 2016 Appropriations bill, Congress authorized a study by the National Academy of Public Administration (NAPA) examining the issue of community affordability. NAPA engaged NACWA during their study process and we look forward to seeing the results of their work, which may help guide revision of EPA's affordability guidance. NACWA strongly urges Congress to require EPA to revise and broaden its guidance for determining financial capability to more accurately reflect a community's financial challenges. We are pleased that this issue is being addressed in legislative proposals in the 115th Congress.

Transparency and Accountability

As NACWA works to advance integrated planning approaches at EPA, we are hopeful and optimistic that the Agency will engage productively and meaningfully with communities around the country to explore approaches to affordability. We are also cognizant that integrated planning represents a shift in Agency approach and one that may require significant outreach and collaboration with the States and municipalities throughout the early years of implementation.

NACWA strongly supports establishing an Office of Municipal Ombudsman within the EPA Office of the Administrator, a proposal that is included in various legislative proposals in the 115th Congress. The Ombudsman would work with EPA Headquarters and Regional Offices to ensure communities are provided information about flexibility available to them under the CWA including the opportunity to develop an integrated plan. We believe an Office of Ombudsman could be an important voice to elevate municipal concerns to the Agency as well.

The Role of Green Infrastructure

EPA's Integrated Planning Framework also encourages the use of innovative, cost-saving tools such as green infrastructure as part of a community's integrated plan. In recent years, clean water agencies around the country have increasingly evaluated green infrastructure alongside gray infrastructure to determine the most appropriate, beneficial, and cost-effective path toward achieving water quality and advancing community goals. Green infrastructure approaches include measures that use plant or soil system landscapes, permeable hardscapes, or stormwater capture and reuse to reduce stormwater flows into sewers and reduce combined sewer overflows into waterways. NACWA is supportive of efforts to increase opportunities for green infrastructure technologies and believes green infrastructure use can be advanced through integrated planning, compliance scheduling, and extended permit terms, which can provide the opportunity for adaptive management and demonstrating progress with innovative infrastructure approaches.

Conclusion

EPA's Integrated Planning Framework offers a unique opportunity to put the federal, state, and local partnership back on track to help meet our communities' and the Nation's various water quality needs while also addressing real affordability concerns. Combined with other strategic proposals outlined above, NACWA believes there is a real opportunity to help reset the nation's approach to advancing clean water in a way that reflects current science and the present-day drivers of water quality impairments—far changed from when the

CWA was first developed—and to address the very real affordability crisis confronting many ratepayers and municipalities.

Clean water agencies have worked tirelessly since 1972 to advance clean water under the CWA. As we look ahead, clean water agencies are eager to develop as Utilities of the Future, fully embracing their role not only in wastewater treatment but as innovative water resource reclamation providers, and as financially and environmentally sustainable assets to their communities. The strategic CWA improvements discussed herein will advance these goals and continued progress on water quality over the next 45 years and beyond.

NACWA thanks the Subcommittee for its time on this important hearing, and the Representatives involved in championing related legislation. We look forward to continued work with the Subcommittee and full Congress to advance these issues.

Statement for the Record
House Committee on Transportation & Infrastructure
Subcommittee on Water Resources and Environment
Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning

May 18, 2017

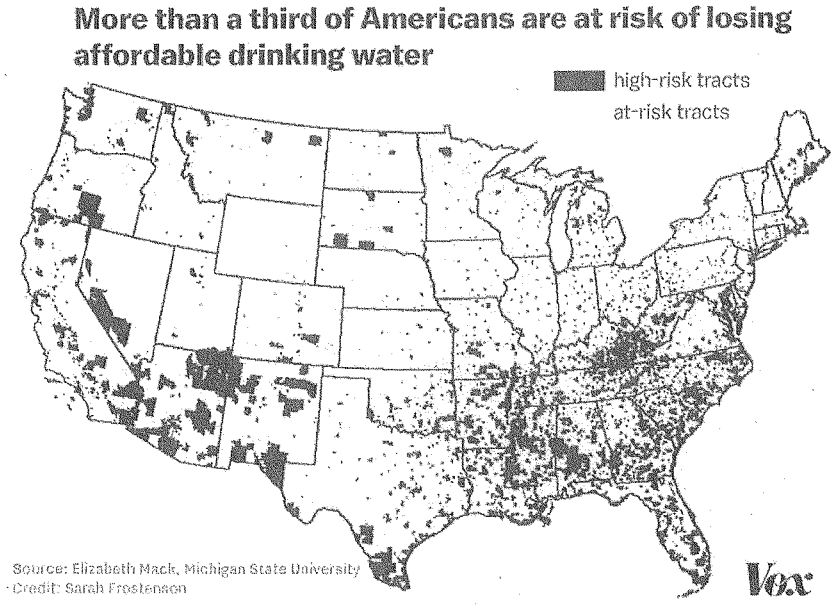
Chairman Graves and Ranking Member Napolitano:

Every American deserves access to clean, affordable water. Without hesitation, clean water should be viewed as a basic human right. For too long America has neglected our water infrastructure, leading to breakdowns in clean water access and skyrocketing water bills for too many people. As municipalities work to comply with the Clean Water Act and fulfill the terms and conditions of Environmental Protection Agency (EPA) consent decrees, the cost of critical infrastructure updates are passed onto the ratepayer, placing a high burden on low-income households.

I greatly appreciate the opportunity to discuss the issue of affordability as you discuss integrated planning and the need for incorporation of green, cost-effective technologies in sewer and wastewater upgrades. In the wake of the poisoning of residents in Flint, Michigan, and the increasing number of reports of water rapidly becoming unaffordable, there are serious concerns about the ability of communities with large numbers of low-income households to afford needed improvements to their sewer and wastewater systems. Recent numbers show that 14 million U.S. households cannot afford their water bills. Tens of thousands of homes in Detroit have had their water shut off due to inability to pay the water bills. Thousands of homes in Flint are facing the prospect of having their water shut off for unpaid bills, bills for water that has and is poisoning them. In my own district, the City of Cleveland faces a 41 percent, five-year rate hike that began in summer 2016. Sewer rates in the City of Akron (Summit County) increased by 69 percent in 2015 alone, threatening the ability of many to afford water.

This unconscionable crisis is the reason I introduced the Low-Income Sewer and Wastewater Assistance Program (LISWAP) Act of 2017. LISWAP would establish a pilot program within EPA to award grants to assist low-income households with their water bills. Socioeconomic status should in no way determine one's ability to access clean, safe drinking water or sanitation. Congress must find a way to alleviate the crippling costs borne by American households, all for the failure to properly invest in water infrastructure over the last several decades.

Urban districts are not alone in this. According to a recent paper from researchers at Michigan State University, water prices will have to increase by 41 percent in the next five years to cover the costs of infrastructure improvements and climate change adaptation. A number of recent surveys of wastewater and drinking water utilities throughout the country show that utilities have been increasing their rates at double the rate of inflation for several consecutive years in an effort to keep pace with new environmental compliance obligations and to upgrade outdated infrastructure. These rising costs will mean nearly 41 million households – nearly **one-third** of U.S. households – will not be able to afford a basic life necessity.



LISWAP addresses the growing water affordability challenge and provides a sustainable path forward for community investment in their water and wastewater infrastructure, while also ensuring low-income households do not bear a disproportionate financial burden. I look forward to working with the Committee to improve our water and wastewater infrastructure, and ensure that all families can afford safe, clean water.

Sincerely,

Marcia L. Fudge

American Rivers * American Sustainable Business Council * Earthjustice
Environment America * League of Conservation Voters
Natural Resource Defense Council * Puget Soundkeeper Alliance * River Network
Southern Environmental Law Center * Waterkeeper Alliance

May 18, 2017

Representative Garret Graves
U.S. House of Representatives
430 Cannon House Office Building
Washington, DC 20515

Representative Grace Napolitano
U.S. House of Representatives
1610 Longworth House Office Building
Washington, DC 20515

RE: Hearing, Building a 21st Century Infrastructure for America: Improving Water Quality though Integrated Planning

Dear Chairman Graves and Ranking Member Napolitano:

The federal government plays a critical role in building, maintaining, and permitting water infrastructure, including providing consistent environmental protection across all states. Water is a precious resource and while infrastructure is necessary to convey, hold, and manage water, it is important that the construction and operation of infrastructure does not inadvertently diminish water quality and quantity. We respectfully ask the Subcommittee on Water Resources and Environment of the Transportation and Infrastructure Committee to **ensure the protections provided in the Clean Water Act for public health and the environment are maintained in all integrated planning and permitting policies.**

The Environmental Protection Agency (EPA) calculates that our wastewater infrastructure needs $271 billion in investments.[1] Water utilities across the country are often inadequately sized, rely on out of date technologies, or have deteriorated due to decades of deferred maintenance. Fiscal pressures on municipalities are great and funding is limited. Many municipalities are growing and water systems cannot keep up with the demand. Other municipalities are not as populated as they once were which means fewer ratepayers and excess capacity in their water system. In addition to population shifts, municipalities have to deal with climate change impacts and changing weather patterns - some communities are experiencing drought and others are experiencing increased flooding and storm surges, exacerbating problems they are already

[1] "Clean Watersheds Needs Survey 20012 Report to Congress," U.S. Environmental Protection Agency, 2016, https://www.epa.gov/sites/production/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf.

experiencing from outdated infrastructure. It is vital for our communities to develop sustainable strategies that maximize benefits per dollar investment. Municipal governments and wastewater agencies need real help in updating pollution control plants. However, the federal protections provided for in the Clean Water Act must be at the forefront of any solution and should not be ignored.

In 2012, the EPA released the *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (The Framework). The Framework outlines principles for communities structuring plans for addressing multiple Clean Water Act obligations to sequence costs, which would help make compliance more affordable overall. The Framework explicitly disallowed for a delay in compliance with permits and enforcement actions based on the new integrated plan. Clean Water Act protections for public health and the environment must be preserved and followed in an integrated approach to ensure that water services benefit the ratepayer, taxpayer, communities, and the environment.

However, legislation like **H.R. 465, the "Water Quality Improvement Act of 2017," weakens the Clean Water Act and does not address the issue of our country's outdated and failing water infrastructure.** Rather than providing municipalities with the resources they need to come into compliance with the Clean Water Act, this bill allows water utilities to regress in their progress towards meeting water quality standards. H.R. 465 allows utilities to claim that the cost of cleaning up pollution is too great, and therefore those utilities need not take the steps necessary to comply with Clean Water Act standards.

H.R. 465 incorporates a wastewater utility's "integrated plan" for long-term compliance into the utility's permit and, upon permit renewal, allows for the plan's requirements to be "modified or removed" based on a skewed analysis of economic affordability, and in order to "help the municipality" comply – i.e., lower the bar for compliance. The bill's affordability criteria address only factors that the permittees believe will portray compliance as unaffordable, with no consideration either of factors that can make compliance less costly and more affordable or of the benefits of investing in clean water infrastructure. This potentially allows for permit requirements to be weakened and is in direct violation of anti-backsliding provisions in the Clean Water Act. The bill would also require EPA to incorporate the same "economic affordability" criteria in revisions to EPA's 1997 Financial Capability Assessment guidance, thereby making them broadly applicable to municipal CWA compliance, beyond the context of integrated planning.

H.R. 465 also appears to create an end run around of compliance with existing water quality standards- which protect fishable, swimmable waters – by evading the provisions in existing law that guard against relaxation of these standards. In addition, H.R. 465 identifies "reasonable progress… towards meeting permit requirements" as a guiding principle for compliance

schedules, in tension with more protective existing law that requires schedules that "will lead to compliance... as soon as possible."

H.R. 465 prioritizes the current finances of water utilities over the economic costs that pollution imposes upon our communities. It ignores the value of health, environment, and economic benefits of clean water, and fails to provide solutions that make achieving those benefits more affordable to ratepayers. The bill aims to reverse more than 45 years of Clean Water Act precedent, and creates disincentives for timely action to restore our rivers and neighborhoods. It also makes it more likely that wealthy neighborhoods will have clean water, while poor neighborhoods are left behind. We oppose any weakening of Clean Water Act requirements.

Integrated Planning and Permitting, when done correctly, allows municipalities to meet the requirements of the Clean Water Act by sequencing investments in wastewater and stormwater infrastructure by highest priority, without changing existing regulatory or permitting standards. Affordability is a part of integrated planning and permitting, but it should not be used as an excuse to defer real progress in meeting water quality standards. Municipal governments and wastewater agencies need real investment led by local, state, and federal sources, coupled with utilities' adoption of well-known practices that reduce the costs of compliance to ratepayers. This will secure our communities and rivers against further pollution.

The undersigned organizations support a holistic approach to achieving clean and reliable water for our communities by using cost-effective and innovative investments in water infrastructure. The approach taken must maintain protections for clean water and public health provided for in the Clean Water Act. There is a benefit to moving towards more integrated infrastructure though better planning, evaluation, and sequencing of investments, especially if smarter infrastructure is driving this process. Natural and nature-based solutions such as green stormwater infrastructure and water efficiency reduce polluted runoff, recharge drinking water supplies, and increase community green space.

The issue of how to address outdated and failing water infrastructure and the future of infrastructure investments to protect clean water and public health is of critical importance to our nation. We appreciate the Committee on Transportation and Infrastructure's Subcommittee on Water Resources and the Environment for taking the time to have a hearing on this important topic.

Sincerely,

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