

**REVIEW OF FISCAL YEAR 2024 BUDGET REQUEST:
AGENCY PERSPECTIVES (PART 2)**

(118-24)

HEARING
BEFORE THE
SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

JULY 13, 2023

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CONTENTS

| | Page |
|---|------|
| Summary of Subject Matter | vii |
| STATEMENTS OF MEMBERS OF THE COMMITTEE | |
| Hon. David Rouzer, a Representative in Congress from the State of North Carolina, and Chairman, Subcommittee on Water Resources and Environment, opening statement | 2 |
| Prepared statement | 3 |
| Hon. Grace F. Napolitano, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Water Resources and Environment, opening statement | 4 |
| Prepared statement | 6 |
| Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure, opening statement | 8 |
| Prepared statement | 9 |
| WITNESSES | |
| Hon. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency, oral statement | 11 |
| Prepared statement | 12 |
| Maria-Elena Giner, Ph.D., P.E., Commissioner, United States Section, International Boundary and Water Commission, oral statement | 15 |
| Prepared statement | 17 |
| Louis Aspey, Associate Chief, Natural Resources Conservation Service, U.S. Department of Agriculture, oral statement | 22 |
| Prepared statement | 24 |
| Aaron Bernstein, M.D., M.P.H., Director, Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, oral statement | 27 |
| Prepared statement | 29 |
| Nicole R. LeBoeuf, Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration, oral statement | 33 |
| Prepared statement | 35 |
| SUBMISSIONS FOR THE RECORD | |
| Submissions for the Record by Hon. David Rouzer: | |
| Letter of June 28, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Alicia G. Huey, Chairman of the Board, National Association of Home Builders of the United States | 39 |
| Letter of July 7, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Emily W. Coyner, P.G., Senior Director, Environmental Policy, National Stone, Sand & Gravel Association | 40 |
| Letter of July 11, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Caitlin McHale, Associate General Counsel, National Mining Association | 42 |
| Letter of July 13, 2023, to Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Courtney Briggs, Chair, Waters Advocacy Coalition | 44 |

| | Page |
|--|------|
| Submissions for the Record by Hon. David Rouzer—Continued | |
| Letter of June 21, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from U.S. Senators Capito and Lummis, and U.S. Representatives Graves of Missouri and Rouzer | 46 |
| Letter of July 12, 2023, to Hon. David Rouzer, Chairman, Subcommittee on Water Resources and Environment, from Hon. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army | 48 |
| Letter of July 10, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Grace F. Napolitano | 51 |
| Submissions for the Record by Hon. Patrick Ryan: | |
| Memo on Lead Service Lines in Poughkeepsie, NY, May 22, 2023, from Environmental Advocates NY | 56 |
| Article entitled, “America Is Wrapped in Miles of Toxic Lead Cables,” by Susan Pulliam, Shalini Ramachandran, John West, Coulter Jones, and Thomas Gryta, Wall Street Journal, July 9, 2023 | 61 |

APPENDIX

| | |
|---|-----|
| Questions to Hon. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency, from: | |
| Hon. David Rouzer | 91 |
| Hon. Patrick Ryan | 95 |
| Hon. Hillary J. Scholten | 95 |
| Hon. Greg Stanton | 97 |
| Questions to Maria-Elena Giner, Ph.D., P.E., Commissioner, United States Section, International Boundary and Water Commission, from: | |
| Hon. David Rouzer | 97 |
| Hon. Grace F. Napolitano | 100 |
| Questions from Hon. David Rouzer to Louis Aspey, Associate Chief, Natural Resources Conservation Service, U.S. Department of Agriculture | |
| | 100 |
| Questions to Aaron Bernstein, M.D., M.P.H., Director, Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, from: | |
| Hon. David Rouzer | 100 |
| Hon. Hillary J. Scholten | 101 |
| Questions to Nicole R. LeBoeuf, Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration, from: | |
| Hon. David Rouzer | 102 |
| Hon. Jenniffer González-Colón | 102 |



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JULY 7, 2023

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on “*Review of Fiscal Year 2024 Budget Request: Agency Perspectives (Part II)*”

I. PURPOSE

The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will meet on Thursday, July 13, 2023, at 2:00 p.m. ET in 2167 of the Rayburn House Office Building to receive testimony on “*Review of Fiscal Year 2024 Budget Request: Agency Perspectives (Part II)*.” The Subcommittee previously held a hearing on Thursday, June 22, 2023, at 10:00 a.m. ET and received testimony from some of the Federal agencies under the jurisdiction of the Subcommittee related to the President’s Fiscal Year (FY) 2024 Budget Request. The purpose of these hearings is to provide Members with an opportunity to review the FY 2024 budget request, as well as the Administration’s program priorities within the jurisdiction of the Subcommittee.

During this second hearing, the Subcommittee will receive testimony from the remaining agencies under the Subcommittee’s jurisdiction including: the United States Environmental Protection Agency (EPA), International Boundary and Water Commission, United States Section (IBWC), Natural Resources Conservation Service (NRCS), Agency for Toxic Substances and Disease Registry (ATSDR), and National Oceanic and Atmospheric Administration (NOAA). At the first hearing, the Subcommittee received testimony from the United States Army Corps of Engineers (Corps), Tennessee Valley Authority (TVA), and Great Lakes St. Lawrence Seaway Development Corporation (GLS).

II. ENVIRONMENTAL PROTECTION AGENCY (EPA)

The Subcommittee’s jurisdiction over EPA includes programs aimed at protecting the Nation’s water quality pursuant to the Clean Water Act.¹ The EPA, through its own programs and in partnership with states and tribes, seeks to improve water quality nationwide through investment in wastewater infrastructure, water quality standards, permitting programs, water quality monitoring, wetlands protection, and research, among other activities.² The EPA’s Office of Water manages the EPA’s water quality protection programs. The Subcommittee also holds jurisdiction over

¹ H. COMM. ON TRANSP. & INFRASTRUCTURE, JURISDICTION AND ACTIVITIES OF THE SUBCOMM. ON WATER RES. AND ENVIRONMENT, 118TH CONG., (2023) (on file with Comm.) [hereinafter JURISDICTION AND ACTIVITIES REPORT].

² *Id.*

the Superfund and brownfields programs, which are managed by EPA's Office of Land and Emergency Management (OLEM).³

SUMMARY OF FY 2024 BUDGET REQUEST

The Administration's FY 2024 budget request for EPA totals \$12.083 billion, a 19.1 percent increase from the FY 2023 enacted level of \$10.149 billion.⁴ The EPA will receive an additional \$11.608 billion dollars in emergency supplemental funding in FY 2024 through the Infrastructure Investment and Jobs Act (IIJA), with the majority of these funds distributed as capitalization grants to states for local water infrastructure related programs.⁵

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President's (millions of dollars) | President's Budget Over the FY 2023 Enacted Level | |
|---|---------------------------------------|---|---|--------------|
| | | | Millions of Dollars | Percent |
| Science and Technology | 802.3 | 967.8 | 165.6 | 20.6% |
| Environmental Programs and Management | 3,286.3 | 4,511.0 | 1,224.7 | 37.3% |
| <i>Geographic Programs</i> | 681.7 | 682.1 | 0.3 | 0.0% |
| <i>National Estuary Program</i> | 40.0 | 32.5 | -7.5 | -18.7% |
| State and Tribal Assistance Grants † | 4,493.7 | 5,855.6 | 1,361.9 | 30.3% |
| <i>Clean Water SRF</i> | 1,638.9 | 1,638.9 | 0.0 | 0.0% |
| <i>Drinking Water SRF</i> ‡ | 1,126.1 | 1,126.1 | 0.0 | 0.0% |
| WIFIA | 75.6 | 80.4 | 4.8 | 6.3% |
| Hazardous Substance Superfund | 1,282.7 | 355.9 | -926.8 | -72.3% |
| EPA OIG | 44.0 | 64.5 | 20.5 | 46.6% |
| Other * | 164.0 | 248.0 | 83.9 | 51.2% |
| Total | \$10,148.7 | \$12,083.3 | \$1,934.5 | 19.1% |

Italics denote subsections of larger programs

† The State and Tribal Assistance Grants program includes several grant programs other than the SRFs.

‡ Drinking Water SRF is outside of the Subcommittee's jurisdiction and falls under the jurisdiction of the Committee on Energy and Commerce.

* Includes appropriations to the following accounts: Buildings and Facilities; Leaking Underground Storage Tank (LUST) program; and Inland Oil Spill program.

Clean Water State Revolving Fund (CWSRF): The FY 2024 budget request proposes \$1.639 billion in Federal capitalization grants for the CWSRF, which is equal to the FY 2023 enacted level.⁶ The CWSRF is the primary Federal program for funding wastewater infrastructure projects and activities throughout the Nation.⁷ CWSRF funds are used to provide low-cost financing for state clean water infrastructure programs, which in turn fund locally developed wastewater infrastructure projects and activities.⁸ The CWSRF and Drinking Water SRF are funded under the State and Tribal Assistance Grants (STAG) account; which provides categorical grants to states and tribes as part of the cooperative partnership between the Federal government, states, and tribes.

IIJA appropriated \$2.403 billion for the CWSRF program for FY 2024, supplementing regular appropriations.⁹ Additionally, IIJA appropriated \$225 million that same year for CWSRF to specifically address emerging contaminants.¹⁰ IIJA also reserved a portion of these funds to be distributed as grants to economically disadvantaged communities.¹¹

Water Infrastructure Finance and Innovation Act Program (WIFIA): Originally authorized by the Water Resources Reform and Development Act (WRRDA) of 2014 (P.L. 113–121), the WIFIA program provides low-interest loans or loan guarantees to eligible entities for a wide range of Nationally and regionally significant water

³ *Id.*

⁴ EPA, FY 2024 JUSTIFICATION OF APPROPRIATION ESTIMATES (2023), available at <https://www.epa.gov/system/files/documents/2023-03/fy-2024-congressional-justification-all-tabs.pdf> [hereinafter EPA BUDGET JUSTIFICATION].

⁵ IIJA, Pub. L. No. 117–58, Div. J, Title VI, 135 Stat. 1396 [hereinafter IIJA]; see also Appendix I.

⁶ EPA BUDGET JUSTIFICATION, *supra* note 4, at 1314; the FY 24 authorization for the CWSRF is \$3 billion (see section 607 of the Federal Water Pollution Control Act (33 U.S.C. 1387)).

⁷ *Id.*

⁸ *Id.*

⁹ IIJA, *supra* note 5; see also Appendix I.

¹⁰ *Id.*

¹¹ *Id.*

and wastewater projects.¹² The FY 2024 budget requests \$80.4 million for the WIFIA program, a 6.3 percent increase from the FY 2023 enacted level of \$75.6 million.¹³

Environmental Programs and Management (EPM): This account provides funds for internal programmatic activities. The FY 2024 budget requests \$4.511 billion for EPM. This represents a 37.3 percent increase from the FY 2023 enacted level.¹⁴ IJA also appropriated \$387 million in supplemental funding to this account for FY 2024.¹⁵

Included in the EPM account, the FY 2024 budget requests \$32.5 million for the National Estuary Program.¹⁶ This represents a decrease of 18.7 percent from the FY 2023 enacted level of \$40 million.¹⁷

Geographic (Regional) Programs: EPA's Geographic Programs provide an opportunity to target regionally specific water quality issues and to work closely with state and local partners. The President's FY 2024 budget requests \$682.1 million for geographic programs, an increase from the FY 2023 enacted level of \$681.7 million.¹⁸

The FY 2024 request specifically includes: \$368.2 million for the Great Lakes Restoration Initiative (GLRI), \$92.1 million for the Chesapeake Bay Program, \$25.6 million for the Gulf of Mexico, \$25 million for Lake Champlain, \$40 million for Long Island Sound, \$8.5 million for South Florida, \$54.5 million for San Francisco Bay, \$54 million for Puget Sound, \$7 million for Southern New England Estuary, \$2.2 million for Lake Pontchartrain, and \$5 million for other activities.¹⁹

Additionally, IJA appropriated \$343.4 million in supplemental funding in FY 2024 EPA's Geographic Programs.²⁰ This includes \$200 million for the GLRI, \$47.6 million for Chesapeake Bay, \$10.6 million for the Gulf of Mexico, \$8 million for Lake Champlain, \$21.2 million for Long Island Sound, \$3.2 million for South Florida, \$4.8 million for San Francisco Bay, \$17.8 million for Puget Sound, \$15.8 million for the Columbia River Basin, \$10.6 million for Lake Pontchartrain, and \$800,000 for other activities including the Pacific Northwest.²¹

Superfund Program: The Superfund program was established by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (P.L. 96-510) in 1980, and is run by EPA's Office of Land and Emergency Management (OLEM).²² The Superfund program is the Federal program established to clean up the Nation's worst uncontrolled and/or abandoned hazardous waste sites.²³ The Superfund program is also available to respond to emergency situations involving the release of hazardous substances.²⁴ EPA addresses the highest-priority sites by listing them on the Superfund National Priorities List (NPL).²⁵ CERCLA requires responsible parties to pay for the hazardous waste cleanups or response costs, and provides for the Superfund Trust Fund to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise held accountable.²⁶

In the 117th Congress, three excise taxes were reinstated to pay into the Superfund. IJA reinstated the Chemicals Superfund Tax and Hazardous Substances Tax, while the Inflation Reduction Act (IRA) (P.L. 117-169) reinstated a tax on crude oil and petroleum products.²⁷ The Consolidated Appropriations Act of 2023 (P.L. 117-328) included language allowing tax receipts collected in the Superfund Trust Fund from the prior fiscal year to be available to implement CERCLA without further Congressional appropriation and be designated as emergency funding.²⁸ This budgetary treatment prevents the collection and spending of these receipts from counting toward the Appropriations Committee's allocation or top-line funding level. There-

¹² WRRDA 2014, Pub. L. No. 113-121, Title V, 128 Stat. 1322.

¹³ EPA BUDGET JUSTIFICATION, *supra* note 4, at 955.

¹⁴ *Id.* at 1311.

¹⁵ IJA, *supra* note 5. *See also* Appendix I.

¹⁶ EPA BUDGET JUSTIFICATION, *supra* note 4, at 1310.

¹⁷ *Id.*

¹⁸ *Id.* at 1308.

¹⁹ *Id.*

²⁰ IJA, *supra* note 5; *see also* Appendix I.

²¹ *Id.*

²² JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ CERCLA, 42 U.S.C. 103 [hereinafter CERCLA].

²⁷ IJA, *supra* note 5 § 80201; IRA, Pub. L. No. 117-169 § 13601, 136 Stat. 1981.

²⁸ Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 §443 [hereinafter Consolidated Appropriations Act of 2023].

fore, these receipts are not included in the table summarizing EPA's enacted and requested funding.

The President's budget requests \$355.9 million in Superfund appropriations, a decrease of 72.3 percent from the FY 2023 enacted level.²⁹ However, the United States Department of the Treasury forecasts collecting a total of \$2.544 billion in Superfund taxes in FY 2023 that will be available for use in FY 2024.³⁰ These funds are covered by the budgetary treatment change in the Consolidated Appropriations Act of 2023 and are not included in the table of enacted and requested EPA funding. Using these estimates, EPA's total budgetary authority for Superfund as proposed by the President's budget would be \$2.9 billion, a 71.0 percent increase from the FY 2023 enacted level.

Brownfields: Brownfields are properties for which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.³¹ Examples of these sites include former industrial properties, gas stations, or dry cleaners.³² EPA's OLEM manages the brownfields program.³³ The Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118) authorized funding for EPA to award brownfields assessment, cleanup and revolving loan fund grants, and provided limited Superfund liability protections for certain innocent landowners and bona fide prospective purchasers.³⁴

The FY 2024 budget request proposes \$216.6 million in funding for EPA's brownfields program.³⁵ This includes \$131.0 million in site assessment and clean up grants (STAG account), \$47.0 million for authorized state brownfields programs (STAG account), and \$38.6 million for EPA's management of the Brownfields program (EPM account).³⁶ This represents an increase of \$43.2 million over the FY 2023 enacted levels in total.³⁷ IIJA also appropriated \$300 million in supplemental funding for brownfields for FY 2024.

III. U.S. ARMY CORPS OF ENGINEERS (CORPS)

The Corps studies, constructs, operates and maintains water resources development projects for the Nation, usually through cost-shared partnership with non-Federal sponsors.³⁸ Authorized mission activities include navigation, flood damage reduction, hurricane and storm damage reduction, shoreline protection, hydropower, water supply, recreation, environmental infrastructure, environmental restoration, enhancement and protection, fish and wildlife mitigation, and disaster response and recovery.³⁹ The water resources development programs and projects of the Corps provide for continued economic growth, job creation, and economic stability while protecting human lives and property, ensuring reliable waterborne transportation of goods, and restoring valuable natural resources.

SUMMARY OF FY 2024 BUDGET REQUEST

The Administration's FY 2024 budget request for the Corps totals \$7.413 billion, a decrease of 10.8 percent from the FY 2023 enacted level of \$8.310 billion.⁴⁰ IIJA also provided the Corps with supplemental appropriations of \$1 billion for Operation and Maintenance (O&M) and \$50 million for Construction in FY 2024.⁴¹

²⁹ EPA BUDGET JUSTIFICATION, *supra* note 4, at 1313.

³⁰ *Id.* at 652.

³¹ JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

³² *Id.*

³³ *Id.*

³⁴ Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118, 115 Stat. 2356.

³⁵ EPA BUDGET JUSTIFICATION, *supra* note 4, at 1308, 1314, 1316.

³⁶ *Id.*

³⁷ *Id.*

³⁸ JURISDICTION AND ACTIVITIES REPORT, *supra* note 1

³⁹ *Id.*

⁴⁰ DEPT OF THE ARMY OFFICE, ASS'T SEC'Y OF THE ARMY (CIVIL WORKS), FY 2024 CIVIL WORKS BUDGET OF THE UNITED STATES ARMY CORPS OF ENGINEERS (March 2023), available at <https://usace.contentdm.oclc.org/utills/getfile/collection/p16021coll6/id/2317> [hereinafter ARMY CORPS CIVIL WORKS FY 2024 BUDGET]; see also WHITE HOUSE, CORPS OF ENGINEERS—CIVIL WORKS APPROPRIATIONS, available at https://www.whitehouse.gov/wp-content/uploads/2023/03/coe_fy2024.pdf [hereinafter ARMY CORPS CIVIL WORKS FY 2023 APPROPRIATIONS] (describing the FY 2023 Enacted Levels).

⁴¹ IIJA, *supra* note 5, Div. J, Title III; see also Appendix I.

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President's (millions of dollars) | President's Budget Over the FY 2023 Enacted Level | |
|--|---------------------------------------|---|---|---------------|
| | | | Millions of Dollars | Percent |
| Investigations | 172.5 | 129.8 | -42.7 | -24.7% |
| Construction | 1,808.8 | 2,014.6 | 205.8 | 11.4% |
| Operation and Maintenance (O&M) | 5,078.5 | 2,629.9 | -2,448.6 | -48.2% |
| HMTF † | N/A | 1,726.0 | 1,726.0 | N/A |
| Regulatory Program | 218.0 | 221.0 | 3.0 | 1.4% |
| Expenses | 215.0 | 212.0 | -3.0 | -1.4% |
| Office of ASA-CW | 5.0 | 6.0 | 1.0 | 20.0% |
| Mississippi River and Tributaries (MR&T) | 370.0 | 226.5 | -143.5 | -38.8% |
| FUSRAP | 400.0 | 200.0 | -200.0 | -50.0% |
| Flood Control and Coastal Emergencies (FCCE) | 35.0 | 40.0 | 5.0 | 14.3% |
| WIFIA | 7.2 | 7.2 | 0.0 | 0.0% |
| Total | \$8,310.0 | \$7,413.0 | -\$897.0 | -10.8% |

† The President's budget proposes to execute these appropriations within HMTF rather than transfer and execute them in Construction, O&M and MR&T accounts. Congress typically specifies that a portion of the appropriations provided to the Construction, O&M and MR&T accounts be derived from the HMTF.

*Sources of Appropriations for FY 2024 Budget Request:*⁴²

- General Fund \$5.624 billion
- Harbor Maintenance Trust Fund \$1.726 billion
- Special Recreation User Fees \$62.6 million

Investigations: The Investigations program funds studies to determine the need, feasibility, and economic and environmental benefits of potential water resources projects.⁴³ This account also funds the restudy of authorized projects, miscellaneous investigations, and plans and specifications of projects prior to construction.⁴⁴ The FY 2024 budget request proposes \$129.8 million for the Investigations program.⁴⁵

Requested funding for Investigations includes \$35.5 million for technical and planning assistance programs that will help local communities, including disadvantaged communities, identify and address their risks associated with climate change.⁴⁶ The budget also requests funding to continue studies intended to investigate climate resilience along the Great Lakes coast and in Central and Southern Florida.⁴⁷

The FY 2024 budget proposes funding to initiate five new studies: Klamath Basin, CA (aquatic ecosystem restoration); Southeast Michigan (flood and storm damage reduction); Tittabawassee River, Chippewa River, Pine River and Tobacco River, MI (flood and storm damage reduction); Fox Point Hurricane Barrier, RI (flood and storm damage reduction); Morgantown, WV Lock and Dam Automation (flood and storm damage reduction).⁴⁸ The budget request also proposes funding to complete three ongoing studies: Guadalupe River, CA (General Reevaluation Report) (flood and storm damage reduction); St. Augustine Back Bay, FL (flood and storm damage reduction); Columbia and Lower Willamette Rivers below Vancouver, WA and Portland, OR (dredged material management plan).⁴⁹

Construction: The FY 2024 budget uses performance guidelines to steer allocation of construction funds, giving priority to projects with the highest economic, environmental, and safety returns.⁵⁰ The FY 2024 budget requests \$2.015 billion in funding for the Construction program, a level which would ensure momentum on critical infrastructure projects across the Nation.⁵¹

The FY 2024 proposal includes \$415 million for the South Florida Ecosystem Restoration Plan (Everglades) program, \$66.7 million for Columbia River Fish Mitiga-

⁴² ARMY CORPS CIVIL WORKS FY 2024 BUDGET, *supra* note 40, at 4.

⁴³ *Id.* at 2.

⁴⁴ *Id.*

⁴⁵ *Id.* at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* at 8.

⁵⁰ *Id.* at 2.

⁵¹ *Id.*; ARMY CORPS CIVIL WORKS FY 2023 APPROPRIATIONS, *supra* note 40.

tion, and \$655 million for a dam safety project at Prado Dam, CA.⁵² It also includes \$350 million for replacement of the Cape Cod Canal Bridges and a legislative proposal to transfer these funds to the Commonwealth of Massachusetts to design and construct the replacement bridges.⁵³

The budget request also includes \$235 million for a “Project Cost Increase Reserve” to help complete authorized projects that have experienced cost increases after beginning construction (e.g., Sault Ste. Marie, MI Replacement Lock project).⁵⁴

Operation and Maintenance (O&M): The FY 2024 budget request uses performance guidelines to steer allocation of O&M funds, reflecting a risk-informed approach which considers project and project component conditions and consequences in the event of possible failure of a Corps project.⁵⁵ The budget requests \$2.630 billion in funding for the O&M program.⁵⁶

The budget request also includes \$64 million for O&M activities focused on climate change and/or sustainability at Corps-owned projects, \$51 million to mitigate for adverse impacts from existing Corps-owned projects, and \$26 million to install refueling infrastructure for zero-emission vehicles at Corps-owned projects.⁵⁷

The budget request does not propose allocating funds directly from the Inland Waterways Trust Fund (IWTF); however, it proposes \$997 million for maintenance and navigation improvement on the inland waterways, giving preference to the waterways with the most commercial traffic.⁵⁸

Harbor Maintenance Trust Fund (HMTF): The FY 2024 proposal includes \$1.726 billion from the HMTF for eligible projects, emphasizing O&M, notably dredging, of completed projects.⁵⁹ The proposal also includes \$985 million for O&M of the Nation’s top 50 coastal ports, which handle about 90 percent of the waterborne cargo that is shipped to or from the United States.⁶⁰ The budget includes \$272 million for O&M of Great Lakes projects, \$58 million for projects that support Native American tribe access to legally recognized historical fishing areas, \$15 million for construction projects that accommodate disposal of dredged material from coastal navigation projects, and \$21.2 million for mitigation of adverse impacts from navigation projects.⁶¹ The budget proposes to execute the appropriations to Construction, O&M, and MR&T within the HMTF rather than to transfer and execute them within the respective accounts.

Mississippi River and Tributaries (MR&T): The MR&T program focuses on ongoing work in the lower Mississippi River valley and its tributaries, emphasizing the 1,600 miles of levees and related features on the main stem of the Mississippi and in the Atchafalaya Basin.⁶² The budget requests \$226.5 million for the MR&T program.

Regulatory Program: The budget requests \$221 million for the Corps Regulatory Program, including its work administering Clean Water Act permitting authorities.⁶³

Flood Control and Coastal Emergencies (FCCE): The budget requests \$40 million, a 14.3 percent increase from the FY 2023 enacted level, for preparedness and training to enable Corps staff to respond to communities during floods, hurricanes, and other natural disasters.⁶⁴

Formerly Utilized Sites Remedial Action Program (FUSRAP): The budget requests \$200 million for cleanup of sites contaminated by the Nation’s early atomic weapons development program.⁶⁵ This is a 50 percent decrease from the FY 2023 enacted level of \$400 million.⁶⁶

WIFIA: The budget requests \$7.2 million for WIFIA, including \$5 million for administrative expenses and \$2.2 million for credit subsidy costs related to non-Federal dam safety projects.⁶⁷ This program is separate and unique from EPA’s WIFIA program.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ ARMY CORPS CIVIL WORKS FY 2024 BUDGET, *supra* note 40, at 2.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ ARMY CORPS CIVIL WORKS FY 2024 BUDGET, *supra* note 40, at 2.

⁵⁹ ARMY CORPS CIVIL WORKS FY 2024 BUDGET, *supra* note 40, at 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*; *see also* ARMY CORPS CIVIL WORKS FY 2023 APPROPRIATIONS, *supra* note 40.

⁶⁵ *Id.*

⁶⁶ *See* ARMY CORPS CIVIL WORKS FY 2023 APPROPRIATIONS, *supra* note 40.

⁶⁷ ARMY CORPS CIVIL WORKS FY 2024 BUDGET, *supra* note 40, at 3.

Expenses: The budget requests \$212 million for the Expenses account, which funds the Civil Works program responsibilities of Corps headquarters and division offices, along with other operational costs.⁶⁸ This represents a 1.4 percent decrease from the FY 2023 enacted level of \$215 million.⁶⁹

Office of the Assistant Secretary of the Army for Civil Works (ASA-CW): The budget proposes \$6 million, an increase of \$1 million over FY 2023 levels, for the Office of the ASA-CW, which is responsible for policy direction and oversight of the Civil Works program.⁷⁰

IIJA FUNDING

IIJA provided \$1.050 billion for the Corps in FY 2024, including \$1 billion for O&M and \$50 million for Construction.⁷¹ However, IIJA provided more than \$16 billion in supplemental funding to the Corps the previous two fiscal years, which the Corps has allocated to projects and studies in periodic spend plans. This funding is available until expended. The Corps is not scheduled to receive any supplemental IIJA funds after FY 2024.⁷²

IV. NATURAL RESOURCES CONSERVATION SERVICE (NRCS)

NRCS is authorized to give technical and financial help to local organizations planning and carrying out watershed projects for flood protection, agricultural water management, recreation, municipal and industrial water supply, and wildlife enhancement.⁷³

SUMMARY OF FY 2024 BUDGET REQUEST

The FY 2024 budget requests a total of \$185 million in funding for NRCS watershed programs in the Subcommittee’s jurisdiction.⁷⁴ This represents a 140.3 percent increase in funding from the FY 2023 enacted level of \$77 million.⁷⁵

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President’s (millions of dollars) | President’s Budget Over the FY 2023 Enacted Level | |
|---|---------------------------------------|---|---|---------------|
| | | | Millions of Dollars | Percent |
| Watershed and Flood Prevention Operations | 75.0 | 175.0 | 100.0 | 133.3% |
| Emergency Watershed Protection Program † | 0.0 | 0.0 | 0.0 | N/A |
| Watershed Rehabilitation Program | 2.0 | 10.0 | 8.0 | 400.0% |
| Total | \$77.0 | \$185.0 | \$108.0 | 140.3% |

† This program received emergency funding in FY 2023

The FY 2024 budget reflects \$47 million in mandatory funding for the Watershed Protection and Flood Program, which was created in the Agriculture Improvement Act of 2018 (Farm Bill) (P.L. 115–334), consistent with the FY 2023 enacted level.⁷⁶

The Subcommittee has jurisdiction over Watershed and Flood Prevention Operations activities authorized in the Flood Control Act of 1944 (P.L. 78–534) and the Watershed and Flood Prevention Act of 1954 (P.L. 83–566).⁷⁷ This program directs NRCS to work with localities to plan and install flood prevention improvements and share the cost with a non-Federal sponsor for these activities.⁷⁸ The small watershed operations program provides technical and financial assistance for water conservation projects and sediment and erosion damage reduction projects. The FY 2024 budget request proposes funding for this program at a level of \$175 million,

⁶⁸ *Id.*

⁶⁹ *Id.*; ARMY CORPS CIVIL WORKS FY 2023 APPROPRIATIONS, *supra* note 40.

⁷⁰ *Id.*

⁷¹ IIJA, *supra* note 5, Div. J, Title III; *see also* Appendix I.

⁷² *Id.*

⁷³ *See* JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

⁷⁴ UNITED STATES DEPT OF AGRICULTURE, FY 2024 BUDGET SUMMARY at 32 (2023), *available at* <https://www.usda.gov/sites/default/files/documents/2024-usda-budget-summary.pdf> [hereinafter USDA FY 2024 BUDGET SUMMARY].

⁷⁵ *See id.*

⁷⁶ *Id.*; Agriculture Improvement Act of 2018, Pub. L. 115–334 § 2401, 132 Stat. 4570.

⁷⁷ *See* JURISDICTION AND ACTIVITIES REPORT, *supra* note 1; *see also* Fact Sheet, UNITED STATES DEPT OF AGRICULTURE, WATERSHED PROTECTION AND FLOOD PREVENTION OPERATIONS PROGRAM, *available at* https://www.nrcs.usda.gov/sites/default/files/2022-08/NRCS_WatershedFloodPrev_Fact%20Sheet-2021.pdf.

⁷⁸ *Id.*

which would be an increase of \$100 million from the FY 2023 enacted level of \$75 million.⁷⁹

The Watershed Rehabilitation Program provides financial and technical assistance for the rehabilitation of Federally constructed flood prevention dams that have reached the end of their design lives or no longer meet Federal or state safety criteria or performance standards.⁸⁰ The budget proposal requests \$10 million for FY 2024, an increase of \$8 million above the FY 2023 enacted level.⁸¹

The FY 2024 budget does not request additional funding the Emergency Watershed Protection Program.⁸² However, this program received \$925 million in emergency funding in FY 2023 in the Consolidated Appropriations Act of 2023 (P.L. 117–328).⁸³

IIJA does not provide any funding in FY 2024 for these programs.⁸⁴ However, in FY 2022 IIJA appropriated \$500 million for Watershed and Flood Prevention Operations, \$118 million for the Watershed Rehabilitation Program, and \$300 million for the Emergency Watershed Protection Program.⁸⁵

V. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

The Subcommittee holds jurisdiction over various NOAA programs and activities, including responsibilities under the Clean Water Act, Coastal Zone Management Act Reauthorization Amendments (P.L. 101–508), Marine Protection Research and Sanctuaries Act (P.L. 100–688), Superfund, Oil Pollution Act (P.L. 101–380), Nonindigenous Aquatic Nuisance Prevention and Control Act (P.L. 104–332), Harmful Algal Bloom and Hypoxia Research and Control Act (P.L. 105–383), Estuary Habitat Restoration and Partnership Act of 2000 (P.L. 105–457), and Save Our Seas 2.0 Act (P.L. 116–224).⁸⁶ The Subcommittee’s jurisdictional interest in the National Ocean Service (NOS) includes coastal water pollution and natural resource damages.⁸⁷

SUMMARY OF FY 2024 BUDGET REQUEST

The FY 2024 budget requests \$687.7 million for the NOS, and \$786.3 million for the Office of Oceanic and Atmospheric Research (OAR).⁸⁸ This represents a 5.9 percent decrease from the FY 2023 level for NOS, and a 0.5 percent increase from the FY 2023 level for OAR.⁸⁹

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President's (millions of dollars) | President's Budget Over the FY 2023 Enacted Level | |
|--|---------------------------------------|---|---|--------------|
| | | | Millions of Dollars | Percent |
| National Ocean Service (NOS) | 731.1 | 687.7 | -43.4 | -5.9% |
| ORF [†] | 717.1 | 679.2 | -37.9 | -5.3% |
| PAC [†] | 14.0 | 8.5 | -5.5 | -39.3% |
| Office of Oceanic and Atmospheric Research (OAR) ... | 782.1 | 786.3 | 4.1 | 0.5% |
| Total | \$1,513.2 | \$1,474.0 | -\$39.2 | -2.6% |

[†] The National Ocean Service (NOS) and Office of Oceanic and Atmospheric Research (OAR) programs receive funding from the Operations, Research, and Facilities (ORF) and Procurement, Acquisition, and Construction (PAC) accounts in annual appropriations bills.

This table represents only discretionary requested funding. Additional mandatory funding for these programs comes from the Damage Assessment and Restoration Revolving Fund, Sanctuaries Asset Forfeiture Fund, and Gulf Coast Ecosystem Restoration Fund.

NOS programs provide scientific, technical, and management expertise to promote safe navigation, protect and restore coastal and marine resources, and manage and

⁷⁹ See USDA FY 2024 BUDGET SUMMARY, *supra* note 74.

⁸⁰ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

⁸¹ See USDA FY 2024 BUDGET SUMMARY, *supra* note 74.

⁸² *Id.*

⁸³ Consolidated Appropriations Act of 2023, *supra* note 28, Div. N.

⁸⁴ See IIJA, *supra* note 5.

⁸⁵ *Id.* at Div. J, Title I; see also Appendix I.

⁸⁶ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

⁸⁷ *Id.*

⁸⁸ NOAA, BUDGET ESTIMATES FISCAL YEAR 2024 (2023), Exhibit 4B, available at https://www.noaa.gov/sites/default/files/2023-04/NOAA_FY24_CJ.pdf [hereinafter NOAA FY 2024 BUDGET ESTIMATES].

⁸⁹ *Id.*

preserve coastal and ocean environments.⁹⁰ While many NOS programs are outside the Subcommittee’s jurisdiction, the National Coastal Zone Management (CZM), which is within in the Subcommittee’s jurisdiction, is housed in NOS.⁹¹ OAR provides research and technology development necessary to improve NOAA climate, weather, and coastal, Great Lakes and ocean services.⁹²

Notable programs of interest to the Subcommittee and their FY 2024 budget request include: \$78.5 million for Coastal Zone Management Grants (a decrease from \$81.5 million in FY 2023); \$22.5 million for National Centers for Coastal Ocean Science (NCCOS) Competitive Research Funding Grants (relatively equal to FY 2023 levels); \$80.7 million for the National Sea Grant College Program (an increase from \$80.0 million in FY 2023); and \$33.7 million for the Coral Reef Program (an increase from \$33.5 million in FY 2023).⁹³

NOS and OAR programs receive funding from the Operations Research, and Facilities (ORF) and Procurement, Acquisition, and Construction (PAC) accounts in annual appropriations bills. IIJA appropriates \$516 million in supplemental funding to the ORF account in FY 2024, however, it is unclear how much of this supplemental funding will go towards programs within the Subcommittee’s jurisdiction.⁹⁴ IIJA appropriates funds to the ORF account each year from FYs 2022–2026 but appropriated \$180 million in supplemental funds to the PAC account only for FY 2022.⁹⁵

VI. GREAT LAKES ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION (GLS)

The St. Lawrence Seaway is a 328 nautical-mile deep-draft waterway between the Port of Montreal and Lake Erie.⁹⁶ It connects the Great Lakes to the Atlantic Ocean via the lower St. Lawrence River.⁹⁷ The Seaway consists of a network of fifteen locks, thirteen of which belong to Canada and two of which belong to the United States, and connecting channels located in the two countries.⁹⁸ The United States section of the Seaway is operated by GLS, which is part of the United States Department of Transportation.

SUMMARY OF FY 2024 BUDGET REQUEST

The FY 2024 budget requests \$40.3 million for GLS, a 4.6 percent increase over the FY 2023 enacted level.⁹⁹

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President’s (millions of dollars) | President’s Budget Over the Enacted Level in FY 2023 | |
|----------------------------------|---------------------------------------|---|--|-------------|
| | | | Millions of Dollars | Percent |
| Operations and Maintenance | 23.7 | 24.0 | 0.3 | 1.2% |
| Seaway Infrastructure | 14.8 | 16.3 | 1.5 | 10.1% |
| Total | \$38.5 | \$40.3 | \$1.8 | 4.6% |

Operational, maintenance and capital asset renewal needs for the United States portion of the St. Lawrence Seaway are derived from appropriations from the HMTF and revenues from other sources.¹⁰⁰ The \$40.3 million request funds Operations and Maintenance at \$24.0 million and Seaway infrastructure investment at a level of

⁹⁰ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See NOAA FY 2024 BUDGET ESTIMATES, *supra* note 88.

⁹⁴ See IIJA, *supra* note 5, Div. J, Title II, 135 Stat. 1355; *see also* Appendix I.

⁹⁵ *Id.*

⁹⁶ GREAT LAKES ST. LAWRENCE SEAWAY SYSTEM, *The Seaway Story*, available at <https://greatlakes-seaway.com/en/the-seaway/>.

⁹⁷ *Id.*

⁹⁸ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

⁹⁹ See UNITED STATES DEP’T OF TRANSP., BUDGET ESTIMATES FISCAL YEAR 2024, GREAT LAKES ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION, Exhibit II-1, available at https://www.transportation.gov/sites/dot.gov/files/2023-03/GLS_FY_2024_President_Budget_508.pdf [hereinafter GLS FISCAL YEAR 2024 BUDGET ESTIMATES].

¹⁰⁰ *Id.* at 1.

\$16.3 million.¹⁰¹ This represents a 1.2 percent increase for Operations and Maintenance and a 10.2 percent increase for infrastructure investment compared to FY 2023 enacted levels.¹⁰²

VII. TENNESSEE VALLEY AUTHORITY (TVA)

TVA is the Nation’s largest government-owned wholesale power producer and was established in 1933 by the Tennessee Valley Authority Act (16 U.S.C. 831).¹⁰³ TVA supplies power to ten million people over an 80,000 square mile service area covering Tennessee along with parts of Mississippi, Alabama, Georgia, North Carolina, Virginia and Kentucky.¹⁰⁴ Additionally, TVA’s non-power program responsibilities include economic development and the management of land and water resources throughout the Tennessee Valley.¹⁰⁵

Initially, Federal appropriations funded all TVA operations. However, direct Federal funding for the TVA power program ended in 1959, and appropriations for TVA’s environmental and economic development activities were phased out by 1999.¹⁰⁶ TVA receives no Federal appropriations but operates and maintains its assets through commercial and residential rates, and the authority to issue Federally secured bonds.¹⁰⁷

VIII. INTERNATIONAL BOUNDARY AND WATER COMMISSION (IBWC)

First established in 1889, the IBWC is responsible for implementing the various boundary and water treaties between the United States and Mexico and settling issues that arise along the border.¹⁰⁸ The IBWC is an international body, composed of a United States sector and Mexico sector, each headed by an Engineer-Commissioner appointed by the respective President.¹⁰⁹ The United States Section of the IBWC is overseen by the United States Department of State.¹¹⁰

SUMMARY OF FY 2024 BUDGET REQUEST

| Program | FY 2023 Enacted (millions of dollars) | FY 2024 President’s (millions of dollars) | President’s Budget Over the Enacted Level in FY 2023 | |
|-----------------------------|---------------------------------------|---|--|--------------|
| | | | Millions of Dollars | Percent |
| Salaries and Expenses | 57.9 | 64.8 | 6.9 | 11.8% |
| Construction | 53.0 | 40.0 | -13.0 | -24.5% |
| Total | \$111.0 | \$104.8 | -\$6.1 | -5.5% |

The FY 2024 budget request for the IBWC totals \$104.8 million, representing a 5.5 percent decrease in funding from the FY 2023 enacted levels.¹¹¹ This total includes \$64.8 million for salaries and expenses, an 11.8 percent increase from FY 2023, and \$40.0 million for construction, a 24.5 percent decrease from FY 2023.¹¹²

IX. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ATSDR)

The ATSDR is housed under the Center for Disease Control and Prevention (CDC) and is the Nation’s public health agency for chemical safety.¹¹³ ATSDR was created by CERCLA to assess the presence and nature of health hazards at Superfund sites and was formally organized in 1986.¹¹⁴ Under its CERCLA mandate, ATSDR’s work falls into four functional areas: (1) protecting the public from hazardous exposures,

¹⁰¹ *Id.* at Exhibit II-1.

¹⁰² *Id.*

¹⁰³ Tennessee Valley Authority Act, 16 U.S.C. 831.

¹⁰⁴ TENNESSEE VALLEY AUTHORITY, *About TVA*, available at <https://www.tva.com/about-tva>.

¹⁰⁵ *Id.*

¹⁰⁶ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See UNITED STATES DEP’T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION DEP’T OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS FISCAL YEAR 2024, at 80, available at https://www.usaid.gov/sites/default/files/2023-03/FY%202024%20CBJ%20FINAL_3.9.23_0.pdf.

¹¹² *Id.*

¹¹³ See JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

¹¹⁴ CERCLA, *supra* note 26, § 9601.

(2) increasing knowledge of toxic substances, (3) educating health care providers and the public, and (4) maintaining health registries.

SUMMARY OF FY 2024 BUDGET REQUEST

| | FY 2023 Enacted (millions of dollars) | FY 2024 President's (millions of dollars) | President's Budget Over the Enacted Level in FY 2023 | |
|-------------|--|--|--|---------|
| | | | Millions of Dollars | Percent |
| Total | \$85.0 | \$86.0 | \$1.0 | 1.2% |

The FY 2024 budget request for ATSDR totals \$86.0 million, up \$1.0 million from the FY 2023 enacted level.¹¹⁵

X. WITNESSES

- *The Honorable Radhika Fox*, Assistant Administrator, Office of Water, United States Environmental Protection Agency
- *Dr. Maria-Elena Giner*, Commissioner, International Boundary and Water Commission, United States Section
- *Mr. Louis Aspey*, Associate Chief, Natural Resources Conservation Service, United States Department of Agriculture
- *Dr. Aaron Bernstein*, Director, Agency for Toxic Substances and Disease Registry, Center for Disease Control and Prevention
- *Ms. Nicole R. LeBoeuf*, Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration

¹¹⁵ UNITED STATES DEP'T OF HEALTH AND HUMAN SERVICES, FISCAL YEAR 2024 AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY JUSTIFICATION OF ESTIMATES, at 8, available at <https://www.cdc.gov/budget/documents/fy2024/FY-2024-ATSDR-congressional-justification.pdf>.

APPENDIX I: IJJA FUNDING IN THE SUBCOMMITTEE'S JURISDICTION
(FY 2022–2026)¹¹⁶

| Program | Agency | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 | 5-Year Total |
|--|-----------|---------------|---------------|---------------|---------------|---------------|---------------|
| (Millions of dollars) | | | | | | | |
| Watershed and Flood Prevention Operations | NRCS ... | 500 | 0 | 0 | 0 | 0 | 500 |
| Watershed Rehabilitation Program | NRCS ... | 118 | 0 | 0 | 0 | 0 | 118 |
| Emergency Watershed Protection Program | NRCS ... | 300 | 0 | 0 | 0 | 0 | 300 |
| Operations, Research, and Facilities (ORF) † | NOAA ... | 557 | 516 | 516 | 516 | 507 | 2,611 |
| Procurement, Acquisition, and Construction (PAC) † | NOAA ... | 180 | 0 | 0 | 0 | 0 | 180 |
| <i>Wildlife Infrastructure</i> ‡ | | 50 | 0 | 0 | 0 | 0 | 50 |
| <i>Weather and Climate Modeling</i> ‡ | | 80 | 0 | 0 | 0 | 0 | 80 |
| <i>Coastal, Ocean, and Great Lakes</i> | | 50 | 0 | 0 | 0 | 0 | 50 |
| Investigations | Corps .. | 120 | 30 | 0 | 0 | 0 | 150 |
| Mississippi River and Tributaries | Corps .. | 808 | 0 | 0 | 0 | 0 | 808 |
| Operation and Maintenance | Corps .. | 2,000 | 1,000 | 1,000 | 0 | 0 | 4,000 |
| Regulatory Program | Corps .. | 160 | 0 | 0 | 0 | 0 | 160 |
| Flood Control and Coastal Emergencies | Corps .. | 251 | 0 | 0 | 0 | 0 | 251 |
| Expenses | Corps .. | 40 | 0 | 0 | 0 | 0 | 40 |
| WIFIA | Corps .. | 75 | 0 | 0 | 0 | 0 | 75 |
| Construction | Corps .. | 11,515 | 50 | 50 | 0 | 0 | 11,615 |
| State and Tribal Assistance Grants | EPA | 10,144 | 10,819 | 11,221 | 11,621 | 11,621 | 55,426 |
| <i>Clean Water State Revolving Funds</i> | | 1,902 | 2,202 | 2,403 | 2,603 | 2,603 | 11,713 |
| <i>Drinking Water State Revolving Funds</i> ‡ | | 1,902 | 2,202 | 2,403 | 2,603 | 2,603 | 11,713 |
| <i>Drinking Water State Revolving Funds, Lead Service Lines</i> ‡ | | 3,000 | 3,000 | 3,000 | 3,000 | 3,000 | 15,000 |
| <i>Clean Water State Revolving Funds, Groundwater</i> | | 100 | 225 | 225 | 225 | 225 | 1,000 |
| <i>Drinking Water State Revolving Funds, PFAS</i> ‡ ... | | 800 | 800 | 800 | 800 | 800 | 4,000 |
| <i>Emerging Contaminants, Sec. 1459A Safe Drinking Water Act</i> ‡ | | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 5,000 |
| <i>Underground Injection Control Grants</i> ‡ | | 50 | 0 | 0 | 0 | 0 | 50 |
| <i>Brownfields</i> | | 300 | 300 | 300 | 300 | 300 | 1,500 |
| <i>Sec. 6605, Pollution Prevention Act</i> ‡ | | 20 | 20 | 20 | 20 | 20 | 100 |
| <i>Save Our Seas 2.0 Act</i> | | 55 | 55 | 55 | 55 | 55 | 275 |
| <i>Grants to Improve Material Recycling</i> ‡ | | 15 | 15 | 15 | 15 | 15 | 75 |
| <i>Clean School Bus Program</i> ‡ | | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 | 5,000 |
| Environmental Programs and Management | EPA | 412 | 387 | 387 | 387 | 387 | 1,959 |
| <i>Geographic Programs</i> | | 343 | 343 | 343 | 343 | 343 | 1,715 |
| <i>National Estuary Program Grants</i> | | 26 | 26 | 26 | 26 | 26 | 132 |
| <i>Gulf Hypoxia Action Plan</i> | | 12 | 12 | 12 | 12 | 12 | 60 |
| <i>Class VI Wells Permitting</i> | | 5 | 5 | 5 | 5 | 5 | 25 |
| <i>Battery Recycling and Labeling</i> | | 25 | 0 | 0 | 0 | 0 | 25 |
| Hazardous Substance Superfund * | EPA | 3,500 | 0 | 0 | 0 | 0 | 3,500 |
| Office of Inspector General ** | EPA | 65 | 49 | 51 | 52 | 52 | 269 |
| Total | | 30,680 | 12,801 | 13,173 | 12,523 | 12,515 | 81,693 |

Italics denote subsections of larger programs
 † NOAA's National Ocean Service (NOS) and Office of Oceanic and Atmospheric Research (OAR) receive funding from ORF and PAC accounts. NOAA's FY 2024 Congressional Justification excludes the IJJA advance appropriations in its budgetary tables. It is unclear in NOAA's budget documents how much IJJA funding went to NOS or OAR. These funding totals reflect the total appropriations to these two major accounts. It is unclear how much of this funding is for programs not within the jurisdiction of the T&I Committee.
 ‡ Denotes programs outside of Subcommittee jurisdiction.
 * Includes specified appropriation and does not reflect transfer to Inspector General.
 ** Estimate provided by the Congressional Budget Office. This total does not directly flow into the totals. Pre-transfer amounts are included in original appropriations for State and Tribal Assistance Grants, Environmental Programs and Management, and the Hazardous Substance Superfund. These pretransfer amounts are reflected in the totals to prevent double counting.

¹¹⁶This chart reflects a summary of IJJA funding as compiled by H. Comm. on Transp. and Infrastructure staff.

**REVIEW OF FISCAL YEAR 2024 BUDGET
REQUEST: AGENCY PERSPECTIVES (PART 2)**

THURSDAY, JULY 13, 2023

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

The subcommittee met, pursuant to call, at 2:30 p.m., in room 2167 Rayburn House Office Building, Hon. David Rouzer (Chairman of the subcommittee) presiding.

Mr. ROUZER. The Subcommittee on Water Resources and Environment will come to order.

I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

And as a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov. Again, that is DocumentsTI@mail.house.gov.

Now I am going to take a quick moment of personal privilege. I just recently found out, actually yesterday, that my great friend and colleague from California, Mrs. Napolitano, has decided that she is not going to run again and retire from Congress.

And at first I was really sad about it. Then it occurred to me she is probably the smartest one here.

Mrs. NAPOLITANO. You are kind, very kind.

Mr. ROUZER. So, anyhow, we are going to miss Grace in the next Congress for sure. And she has been such a delight to work with the entire time, but I am not—I will not dwell on that.

But I will certainly share the microphone with you, Grace, if you want to say a word or two.

Mrs. NAPOLITANO. Thank you very much, Mr. Chair.

This has been a good pleasure. He truly is a good person to work with. Believe me. And I look forward to working with him another year and a half. So, I will be here yet. Don't write me off yet.

Thank you.

Mr. ROUZER. You are not written off, not at all.

I now recognize myself for the purposes of an opening statement.

OPENING STATEMENT OF HON. DAVID ROUZER OF NORTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Mr. ROUZER. Today's hearing is the second this subcommittee is holding on the President's fiscal year 2024 budget proposal.

Today, we are pleased to have representatives from the Environmental Protection Agency, International Boundary and Water Commission, the U.S. Department of Agriculture's Natural Resources Conservation Service, the Centers for Disease Control and Prevention's Agency for Toxic Substances and Disease Registry, and the National Oceanic and Atmospheric Administration, or what we refer to as NOAA.

I would like to start with a topic of keen interest for many of us on the committee, in particular. And I greatly appreciate that we have the Assistant Administrator for EPA's Office of Water, the Honorable Radhika Fox, here with us today, whose agency is central to an issue that we all know as WOTUS.

The definition of waters of the U.S. under the Clean Water Act has been debated in the courts and altered by varying Presidential administrations for decades. At the same time, it has led to uncertainty and bureaucratic back and forth for regulated communities such as farmers, property owners, homebuilders, and infrastructure developers, among many others.

So, I was encouraged to see the Supreme Court act decisively in *Sackett v. EPA*, delivering a seemingly easily implementable and consistent definition of WOTUS.

The *Sackett* decision clarified what the intended scope of the Clean Water Act has always been, doing away with the overreach and confusion of the "significant nexus" test.

This ruling enables EPA, along with the Army Corps of Engineers, to kick-start project completion, eliminate regulatory red-tape, and maintain crucial environmental protections by conforming with *Sackett*. Now, EPA and the Corps must bring the Biden administration's flawed and legally outdated WOTUS rule into compliance.

In response to this, the EPA and the Corps recently announced they will be finalizing a revision to the WOTUS definition by the beginning of September. And while I appreciate the initiative of the agencies to quickly provide a rule consistent with *Sackett*, I am concerned this is not being done through the right procedures, and instead, ramrodded without appropriate input.

Now, at our hearing last month, Assistant Secretary of the Army for Civil Works Michael Connor said the EPA and the Corps will promulgate changes through, quote, a "direct final rulemaking" process under the Administrative Procedure Act, or the APA. This is a rarely used procedure which does not employ the traditional comment-and-response process.

The Biden WOTUS rule was based heavily on the "significant nexus" test, and any revision to the rule will inevitably be major in order to align with the very clear *Sackett* decision.

The APA is straightforward in its requirement for a notice-and-comment rulemaking process for major changes to regulations, and it is crucial that the agencies comply with that.

The EPA has referred to the process it is pursuing as, quote, “surgical” or “ministerial,” which strikes me as a veiled attempt to articulate compliance, while leaving much of the original rule intact. And I hope that I am wrong.

In addition, by moving forward without the proper comment-and-response process for a major change, this administration would be disregarding regulated communities, our constituents, once again, depriving them of the opportunity to ensure that the regulation would actually provide certainty and align with *Sackett*.

Rather than heed the rule of law, it seems to me the administration is trying to preserve much of the original rule, whose main provisions were essentially struck down by the Supreme Court, to maintain their regulatory objectives that are far broader than the law allows.

Thankfully, due to *Sackett*, we no longer have to worry about the outlandish regulations of things like depressions in a farmer’s field, ditches that have collected water after back-to-back storms, or isolated waters that might be visited by a frog living in a nonadjacent navigable water, of all things.

Instead of trying to find ways around *Sackett*, EPA and the Corps should focus their efforts on revising this rule the right way. It is undoubtedly possible for the administration to act both expeditiously and accurately, no question about that. And I urge them to listen to the will of the American people and the Supreme Court and do just that.

Now, moving on from that topic, we also have folks here from a number of other important entities in the subcommittee’s jurisdiction: The International Boundary and Water Commission, the Natural Resources Conservation Service, Agency for Toxic Substances and Disease Registry, and NOAA.

Between them, these entities serve a crucial set of missions including maintaining important water projects and treaties at the southern border, assisting farmers and ranchers with their conservation needs, aiding research into public health and chemical safety, and managing our Nation’s coastal zones.

I look forward to hearing from all of them about their successes and challenges in carrying out these missions.

[Mr. Rouzer’s prepared statement follows:]

Prepared Statement of Hon. David Rouzer, a Representative in Congress from the State of North Carolina, and Chairman, Subcommittee on Water Resources and Environment

Today’s hearing is the second and final in a series this Subcommittee is holding on the President’s fiscal year 2024 budget proposal. Today, we are pleased to have representatives from the Environmental Protection Agency (EPA), International Boundary and Water Commission, United States Department of Agriculture’s (USDA) Natural Resources Conservation Service, the Centers for Disease Control and Prevention’s (CDC) Agency for Toxic Substances and Disease Registry, and the National Oceanic and Atmospheric Administration (NOAA).

I’d like to start by discussing actions involving the EPA. I appreciate that we have the Assistant Administrator for the Office of Water, the Honorable Radhika Fox, here with us today. I would like to bring attention to an issue that my constituents in North Carolina, and communities across the country, care a great deal about—the definition of “waters of the United States” (WOTUS).

The definition of a WOTUS under the Clean Water Act has been debated in the courts and altered by varying presidential administrations for decades. At the same

time, it has led to uncertainty and bureaucratic back-and-forth for regulated communities such as farmers, property owners, homebuilders, and infrastructure developers.

That's why I was encouraged to see the Supreme Court act decisively in *Sackett v. EPA* (*Sackett*), delivering a seemingly easily implementable and consistent definition of WOTUS. The *Sackett* decision clarified what the intended scope of the Clean Water Act has always been, doing away with the overreach and confusion of the "significant nexus" test.

This ruling enables EPA, along with the Army Corps of Engineers (Corps), to kickstart project completion, eliminate regulatory red tape, and maintain crucial environmental protections by expeditiously conforming with *Sackett*. Now, EPA and the Corps must quickly bring the Biden Administration's flawed and legally outdated WOTUS policy into compliance.

In response to this, EPA and the Corps recently announced they will be finalizing a revision to the WOTUS definition by the beginning of September. While I appreciate the agencies' endeavor to quickly provide a rule consistent with *Sackett*, I have concerns whether this will be done correctly and through the right procedures.

At our hearing last month, Assistant Secretary of the Army for Civil Works Michael Connor said that EPA and the Corps will promulgate changes through a "direct to final" rule process under the Administrative Procedure Act (APA). This is a rarely used procedure which does not employ the traditional comment and response process.

The Biden WOTUS rule was based heavily on the "significant nexus" test, and any revision to the rule will inevitably be major in order to align with the clear *Sackett* decision. The APA is clear in its requirement for a notice and comment rule-making process for major changes to regulations, and it is crucial that the agencies comply with it. I am significantly concerned that this approach, which the EPA has called "surgical" or "ministerial," is rather a veiled attempt to articulate compliance while actually circumventing the process.

In addition, by moving forward without the proper comment and response process for a major change, this administration disregards regulated communities once again, depriving them of the opportunity to ensure that the regulation would actually provide certainty and align with *Sackett*. Rather than heed the rule of law, it seems the Administration is working around their failed definition to implement political priorities through other means.

Thankfully, due to *Sackett*, we no longer have to worry about outlandish regulation of things like depressions in a farmer's field, ditches that have collected water after back-to-back storms, or isolated waters that might be visited by a frog living in a non-adjacent navigable water.

Instead of trying to find ways around *Sackett*, EPA and the Corps should focus their efforts on revising this rule the right way. It is undoubtedly possible for the Administration to act both expeditiously and accurately. I urge them to listen to the will of the American people and the Supreme Court and do just that.

Moving on from EPA, we also have folks here from a number of other important entities in the Subcommittee's jurisdiction: the International Boundary and Water Commission, the Natural Resources Conservation Service, the Agency for Toxic Substances and Disease Registry, and NOAA's National Ocean Service.

Between them, these entities serve a crucial set of missions, including maintaining important water projects and treaties at the southern border, assisting farmers and ranchers with their conservation needs, aiding research into public health and chemical safety, and managing our Nation's coastal zones. I look forward to hearing from all of them about their successes and challenges in carrying out these missions.

Mr. ROUZER. I yield back and recognize my good friend and Ranking Member Napolitano for her 5 minutes and her opening statement.

OPENING STATEMENT OF HON. GRACE F. NAPOLITANO OF CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Mrs. NAPOLITANO. Thank you very much, Mr. Chairman, for holding today's hearing on President Biden's fiscal year 2024 budget and priorities for the remaining agencies and within the jurisdiction of this subcommittee.

I welcome our Federal witnesses today, many of whom I have spoken to often about the unique water resources challenges facing our Nation and the regions and communities we are all honored to represent.

I want to extend a special welcome to Assistant Administrator Fox and Commissioner Giner. Welcome. The Federal agencies and offices you serve have seen firsthand the challenges posed by climate change and extreme weather, including persistent drought, in providing continued clean, safe, reliable, and affordable water and wastewater services for the Nation. Thank you for your continued and dedicated service to our Nation.

Mr. Chairman, annual budget proposals of the administration and congressional leaders provide valuable insight into the goals and priorities of their authors. Annual budgets provide an objective way to compare competing visions for the future of our country and for what we stand for in representing our constituents.

This year, the contrasts are stark and telling.

The Biden administration's proposal lays out a bold vision to grow the economy from the bottom up; to invest in cleaner, greener, and more accessible infrastructure; to create jobs and opportunities for all people; and to restore and protect our environment.

That is the same vision shared by House Democrats, who, last Congress, passed the largest infrastructure investments in over a generation through the Bipartisan Infrastructure Law and the Inflation Reduction Act, as well as other transformational infrastructure investment bills, such as the first reauthorization of the Clean Water State Revolving Fund in its history.

With each dollar invested and each new water and wastewater infrastructure project implemented, everyday Americans will continue to reap the benefits of these transformational laws through reduced transportation congestion; cleaner air and cleaner water; and a safer, more resilient, and more livable environment.

Mr. Chairman, House Democrats specifically tailored these investments to address the affordability concerns facing many minority, rural, and Tribal communities, ensuring that all Americans, regardless of ZIP Code, should have access to clean, safe, and reliable drinking water and wastewater services.

However, I remain very concerned that the current Republican leadership of the House is moving this country in a contrary direction of the will of the American people.

For example, House Republican leadership advanced the debt limit proposal that sought to hold hostage the "full faith and credit" of our economy, while blindly slashing critical investments in our economy, our infrastructure, and our quality of life.

While, thanks to the leadership of President Biden, everyday families will be spared the worst of this misguided proposal, it is apparent the Republican leadership continues to advance their draconian cuts even today.

These cuts are most apparent in the projected 40-percent cut to the EPA budget, an agency founded on the principle of safeguarding the health of our citizens and our natural environment.

If the latest House Republican proposal becomes law, rural and coastal communities will be most vulnerable to the effects of ex-

treme weather events and flooding. Fewer families, grandparents, and children will have access to clean air or clean water, and our treasured regional water bodies, such as the Great Lakes, Chesapeake Bay, and the Florida Everglades, will be placed at greater risk.

I am further dismayed by the focus on putting polluters over our people and eliminating Clean Water Act protections on over half of the Nation's wetlands and up to 70 percent of the Nation's streams, rivers, and lakes.

Last month, the Supreme Court's misguided reading of the Clean Water Act undermined our Nation's ability to protect our rivers, streams, and other water bodies for our future generations, the consequences of which are still undefined.

Earlier this week, Ranking Member Larsen and I called upon EPA and the Corps to start documenting the actual day-to-day impacts of the *Sackett* decision. The American people deserve to know how this decision impacts the protection of the rivers, streams, and wetlands in their own backyards and its adverse impact on our local businesses and communities.

I am most concerned the *Sackett* decision has transferred significant costs from polluters to States, localities, and everyday American families. We can all say we support clean water, but I believe those who receive an economic benefit from the activities that may pollute our waters should not be able to profit by transferring the cost to others.

I hope we all know that it is always cheaper to prevent pollution from occurring than to clean up its aftermath.

I look forward to hearing from the witnesses. I hope Congress and the administration can work together to invest in our water infrastructure and protect our clean water for residential, recreational, and environmental use.

Mr. Chairman, I welcome our agency witnesses here today, and thank you for your continued service.

Thank you, I yield back.

[Mrs. Napolitano's prepared statement follows:]

Prepared Statement of Hon. Grace F. Napolitano, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Water Resources and Environment

Thank you, Mr. Chairman, for holding today's hearing on President Biden's fiscal year 2024 budget and priorities for the remaining agencies within the jurisdiction of this Subcommittee.

I welcome our federal witnesses here today—many of whom I have spoken to often about the unique water resources challenges facing our nation and the regions and communities we are honored to represent.

I want to extend a special welcome to Assistant Administrator Fox and Commissioner Giner. The federal agencies and offices you serve have seen, firsthand, the challenges posed by climate change and extreme weather, including persistent drought, in providing continued clean, safe, reliable, and affordable water and wastewater services for the nation.

Thank you for your continued and dedicated service to our nation.

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With each dollar invested and each new water and wastewater infrastructure project implemented, everyday Americans will continue to reap the benefits of these transformational laws through reduced transportation congestion, cleaner air and cleaner water, and a safer, more resilient, and more livable environment.

Mr. Chairman, House Democrats specifically tailored these investments to address the affordability concerns facing many minority, rural, and tribal communities—ensuring that all Americans, regardless of zip code, should have access to clean, safe, and reliable drinking and wastewater services.

However, I remain concerned that the current Republican leadership of the House is moving this country in a direction contrary to the will of the American people. For example, House Republican leadership advanced a debt limit proposal that sought to hold hostage the “full faith and credit” of our economy while blindly slashing critical investments in our economy, our infrastructure, and our quality of life.

While, thanks to the leadership of President Biden, everyday families were spared the worse of this misguided proposal, it is apparent that Republican leadership continues to advance their draconian cuts even today.

These cuts are most apparent in the projected 40 percent cut to the budget of EPA—an agency founded on the principal of safeguarding the health of our citizens and our natural environment.

Mr. Chairman, every week, there is another story about the impacts of climate change on our communities—whether it be the extreme rains in the Northeast, excessive heat in the South and Southwest, or continued drought conditions in communities across the U.S. However, if the House Republican proposal becomes law, all our communities will be more vulnerable to the effects of extreme weather events and flooding—especially those least able to afford measures to make their communities more resilient, such as rural, tribal, and minority communities.

If the House Republican proposal becomes law, fewer Americans will have access to clean water and clean air, and our treasured regional waterbodies, such as the Great Lakes, the Chesapeake Bay, and the Florida Everglades, will be placed at greater risk.

I am further dismayed by their focus on putting polluters over people and eliminating Clean Water Act protections on over half of the nation's wetlands and up to 70 percent of the nation's streams, rivers, and lakes.

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Earlier this week, we called upon EPA and the Corps to start documenting the actual, day-to-day impacts of the *Sackett* decision. The American people deserve to know how this decision impacts the protection of the rivers, streams, and wetlands in their own backyards and its adverse economic impact on our local businesses and communities.

I am most concerned that the *Sackett* decision has transferred significant costs from polluters to states, localities, and everyday American families.

We can all say we support clean water—but I believe that those who receive an economic benefit from activities that may pollute our waters should not be able to profit by transferring that cost to others.

I hope we all know that it is always cheaper to prevent pollution from occurring than to clean up its aftermath.

I look forward to hearing from our witnesses on how the Congress and the Administration can work together to invest in our water infrastructure and protect clean water for residential, recreational, environmental, and economic uses.

Mr. Chairman, I welcome our agency witnesses here today, thank you for your continued service, and yield back the balance of my time.

Mr. ROUZER. I thank the gentlelady.

I note that the ranking member of the full committee, Mr. Larsen, is here. I recognize him for 5 minutes if he so chooses.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair Rouzer and Ranking Member Napolitano, for holding the second hearing on the administration's fiscal year 2024 budget request for agencies within the jurisdiction of the subcommittee.

First, I want to congratulate Grace Napolitano on her service to the U.S. House and to the United States.

[Applause.]

Since 2007, Grace has been a trailblazing member of this committee, fighting to make our waters cleaner and our transportation systems safer and greener. As former chair of the subcommittee, Grace was instrumental in delivering historic, bipartisan solutions to national, regional, and local water resources challenges, shepherding four of the last five WRDA bills and advancing the first reauthorization of the Clean Water State Revolving Fund in its history.

She has been a tireless advocate for smart, resilient water policy and robust water investments, making sure that her communities—and sometimes the rest of us, but I know she has been a tireless advocate for her communities—and communities across the U.S. are prepared for the challenging that they will face with the changing climate.

And, finally, she has been a leader in ensuring a voice for our underrepresented communities including communities of color and Tribal communities.

I wish her the best for the remainder of her service here, as well as for her endeavors after she is done in Congress. But she still has work to do, and we still have need of her here for quite some time.

And, Mr. Chair, I will now shift a little bit to the hearing, as well. These budget hearings offer important opportunities to discuss how the administration's priorities for Federal agencies we oversee line up with congressional priorities and expectations.

This committee's oversight and responsibility over the EPA and other agencies on the panel today extends to money that has already been appropriated including through the Bipartisan Infrastructure Law. In the BIL, on a bipartisan basis, Congress affirmed its commitment to water infrastructure with a significant investment, \$12.7 billion in Federal money, for upgrading wastewater systems, preventing pollution, and supporting restoration programs like those in the Puget Sound where I am from.

These investments are critical, providing a lifeline to communities across the country struggling to maintain water quality. Members who voted for the BIL voted for clean water. We have consistently supported investments in water infrastructure to protect public health and the work that the EPA and other agencies do in support of this clean water mission.

I know firsthand the importance of the EPA's regional watershed program for the Puget Sound. The increased focus and Federal resources associated with EPA's regional programs for the sound, the Chesapeake Bay, the Great Lakes and other critical regional water bodies are vitally important to our communities and to the members on this committee.

Clean bodies of water enhance quality of life, the economy, and the health of the communities that surround them. Maintaining robust Federal funding for EPA and defending against potential cuts in the fiscal year 2024 appropriations process will continue to be a top priority for House Democrats.

All of the agencies here today provide important services when it comes to clean water across the country.

The Natural Resources Conservation Service assists local communities in carrying out watershed projects for flood protection, water management, and ecosystem enhancement.

NOAA has many programs and activities, including work on harmful algal blooms and the National Coastal Zone Management Program.

The International Boundary and Water Commission implements the various boundary and water treaties between the U.S. and Mexico, with its impacts felt from the Tijuana River to the Rio Grande.

And, finally, the Agency for Toxic Substances and Disease Registry is a vital part of the Nation's public health system that assesses the presence and nature of health hazards at Superfund sites. I would note, from what I understand, that the Agency deployed 15 percent of their staff to East Palestine recently just to deal with one train derailment.

So, I look forward to the testimony today and thank each of our witnesses for your participation in today's hearing.

With that, I yield back.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Rouzer and Ranking Member Napolitano for holding this second hearing on the Administration's FY 2024 budget request for agencies within the jurisdiction of the Subcommittee on Water Resources and Environment.

First, let me congratulate Ranking Member Napolitano on her service to Congress and the United States. Since 2007, Grace has been a trailblazing member of this Committee—fighting to make our waters cleaner and our transportation system safer and greener.

As former Chair of this Subcommittee, Grace was instrumental in delivering historic, bipartisan solutions to national, regional, and local water resources challenges—shepherding four of the last five WRDA bills and advancing the first reauthorization of the Clean Water State Revolving Fund in its history.

She has been a tireless advocate for smart, resilient water policy and robust water investments—making sure that her communities and communities across the United States are prepared for the challenges they will face with a changing climate.

Finally, Grace has been a leader in ensuring a voice for our underrepresented communities, including communities of color and tribal communities.

I wish her the very best for the remainder of her service and for her future endeavors after her time in Congress.

Mr. Chairman, these budget hearings offer important opportunities to discuss how the administration's priorities for the federal agencies we oversee line up with congressional priorities and expectations.

The Committee's oversight responsibility over the Environmental Protection Agency (EPA) and other agencies on the panel today extends to money that has already been appropriated, including by the Bipartisan Infrastructure Law (BIL).

In the BIL, on a bipartisan basis, Congress affirmed its commitment to water infrastructure with a significant investment—\$12.7 billion in federal dollars for up-

grading wastewater systems, preventing pollution and supporting restoration programs in places like the Puget Sound where I'm from.

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We have consistently supported investments in water infrastructure to protect public health and the work EPA and other agencies do in support of this clean water mission.

I know firsthand the importance of the EPA's regional watershed program for the Puget Sound.

The increased focus and federal resources associated with EPA's regional programs for the Puget Sound, the Chesapeake Bay, the Great Lakes, and other critical regional waterbodies, are vitally important to the communities Members on this Committee represent.

Clean bodies of water enhance the quality of life, the economy and the health of the communities that surround them. Maintaining robust federal funding for EPA, and defending against potential cuts in the FY2024 appropriations process, will continue to be a top priority for House Democrats. All the agencies here today provide important services when it comes to clean water across the country.

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I look forward to the testimony and thank each of the witnesses for your participation in today's hearing.

Mr. ROUZER. I thank the ranking member.

I would now like to welcome our witnesses, and I certainly thank each of you for being here today.

We have the Honorable Radhika Fox, Assistant Administrator for the Office of Water at the U.S. Environmental Protection Agency.

Dr. Maria-Elena Giner? Is it Giner? Is that correct?

Ms. GINER. Very good.

Mr. ROUZER. Commissioner of the United States Section of the International Boundary and Water Commission; Mr. Louis Aspey, Associate Chief of the Natural Resources Conservation Service at the Department of Agriculture which does a fine job; Dr. Aaron Bernstein, Director of the CDC's Agency for Toxic Substances and Disease Registry; and then Ms. Nicole LeBoeuf, Assistant Administrator of the National Ocean Service of the National Oceanic and Atmospheric Administration.

Again, thank each of you for being here today.

I think you are quite familiar probably with the light system. But green means go. Yellow means red is right around the corner. And red, of course, means wrap it up as quickly as you can.

I ask unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks, as I just mentioned a minute ago, that you

limit your remarks to 5 minutes. And, again, I appreciate each of you being here.

And we will start with Administrator Fox.

TESTIMONY OF HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY; MARIA-ELENA GINER, PH.D., P.E., COMMISSIONER, UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION; LOUIS ASPEY, ASSOCIATE CHIEF, NATURAL RESOURCES CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE; AARON BERNSTEIN, M.D., M.P.H., DIRECTOR, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, CENTERS FOR DISEASE CONTROL AND PREVENTION; AND NICOLE R. LeBOEUF, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

TESTIMONY OF HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. FOX. Good afternoon, Chairman Rouzer, Ranking Member Napolitano, members of the subcommittee.

I am Radhika Fox, Assistant Administrator for Water at the Environmental Protection Agency. I want to thank you for the opportunity to appear before you today to discuss EPA's budget request for water programs for fiscal year 2024 and to also update you on the Agency's efforts to ensure clean and safe water for all Americans.

But before I do that, Ranking Member Napolitano, I want to congratulate you on your retirement, and thank you for your decades of service. As you know, we have known each other for a long time. We first met when I worked for a local water agency in California. And I just have to say you are a true champion for water, not only for your district, but for the Nation. And you will be deeply missed. Thank you.

So, there is nothing more essential than clean and safe water. Yet, if you think back to where we were as a Nation just 50 years ago, our waters were so polluted that rivers were literally on fire. Rivers ran in color. That was just 50 years ago.

And the American people said, enough is enough. Our waters matter. They are worthy of protection. And it is this very committee that acted. They wrote the Clean Water Act, and they shepherded it through Congress with overwhelming bipartisan support.

And with the Clean Water Act, we set an ambitious goal for ourselves. Congress said let us be a Nation that goes from rivers on fire to ensuring that our waters are fishable and swimmable for every American.

And with the Clean Water Act as our North Star, America has made tremendous progress in protecting and restoring our rivers, lakes, streams, and oceans.

But there is much work that remains to be done to ensure clean and safe water for all Americans. Too many waters remain polluted in this country. Too many Americans still lack access to adequate

sanitation, stormwater, and drinking water services. We can and we must do better.

That is why the President's 2024 budget request includes nearly \$6 billion for EPA water programs, about half of the Agency's overall budget. These resources will enable the Agency to support States, Tribes, Territories, and local governments to provide clean and safe water for all communities.

So, I wanted to begin my update by really highlighting some of the work that we are doing to address America's aging water infrastructure.

Thanks to bipartisan congressional action, EPA is investing more than \$50 billion through the Bipartisan Infrastructure Law in local water projects, and nearly \$13 billion of that will go through the Clean Water SRF Program.

While historic, these resources fall short of the need at the local level. That is why the budget proposal provides more than \$4 billion for water infrastructure, an increase of \$1 billion over the 2023 enacted level. This includes about \$1.6 billion for the Clean Water SRF Program, \$280 million for the Sewer Overflow and Stormwater Reuse Program, and \$80 million to support the Water Infrastructure Finance and Innovation Act, or WIFIA.

And let me just say on WIFIA, this has been a tremendous success story. Since 2014, WIFIA has helped communities from Pflugerville, Texas, to Los Angeles, California. EPA has financed more than \$38 billion in water infrastructure projects through WIFIA. We have saved ratepayers, the American ratepayers, more than \$6 billion, and we have created more than 130,000 jobs.

Now, WIFIA is just one example of the power of EPA water infrastructure programs to deliver for the American people, and I want to thank this committee for your ongoing support of that program.

The budget also invests about \$715 million in our place-based programs, treasured water bodies from the Great Lakes to the Gulf of Mexico, from the Outer Banks to the Puget Sound. EPA's budget proposal also includes \$170 million to tackle PFAS pollution including \$60 million for water-related programs.

So, I want to close by calling for continued partnership. Our ability to ensure clean and safe water for all will be determined by the strength of our partnerships including the one between the administration and Congress.

That is why I am just so honored to join you all today. I thank you for the opportunity, and I look forward to the discussion. Thank you.

[Ms. Fox's prepared statement follows:]

Prepared Statement of Hon. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency

Good afternoon, Chairman Rouzer, Ranking Member Napolitano, and Members of the Subcommittee. I am Radhika Fox and I have the great honor of serving as the Assistant Administrator for Water at the U.S. Environmental Protection Agency (EPA). I am grateful for the opportunity to appear before you today to discuss EPA's budget request for water programs for Fiscal Year 2024, and to highlight the work we are doing, stewarding these precious taxpayer resources, on behalf of the American people.

Clean and safe water is an essential foundation to protect human health, to ensure thriving ecosystems, and to drive a strong economy. Just over 50 years ago, this Committee wrote and shepherded through Congress the Clean Water Act with broad bipartisan support, establishing the goal that our Nation's treasured waters be fishable and swimmable, and giving to EPA the authority and responsibility to address pollution, protect wetlands and water resources, and improve wastewater and stormwater infrastructure. These goals remain central to President Biden's, Administrator Regan's, and my own values, and to our approach to implementing all of our Clean Water Act programs. Although we have made immense progress to achieve these goals, there is much work that remains to be done. We continue to make great strides to protect the integrity of our Nation's waters, but many remain polluted or threatened. So, too, have we made progress in improving our Nation's clean water infrastructure, yet too many people in this country still lack access to adequate drinking water, sanitation, and stormwater infrastructure. That is why in FY 2024, the President's budget requests nearly \$6 billion for EPA's water programs—just under half of the Agency's total \$12.1 billion request. These resources will enable the Agency to continue our work with federal, Tribal, state, local, and nongovernmental partners to provide clean and safe water for all communities, advance water quality science, and protect America's waters for today's and future generations.

Before turning to our budget requests, I want to take a moment to recognize and express my profound gratitude to the incredible career staff in the EPA's Office of Water, and in our Regional Water Divisions. Their dedication, technical expertise, and hard work are delivering on this Administration's promise to protect our Nation's waters and rebuild America's water infrastructure.

ACHIEVE CLEAN AND SAFE WATER THROUGH INVESTING IN AMERICA'S WATER INFRASTRUCTURE

When I was last invited to appear before this committee to discuss our FY 2022 budget, I highlighted the promise of what was, at the time, a proposal for more than \$50 billion in the then-Bipartisan Infrastructure Framework. Thanks to President Biden's leadership, and bipartisan action in Congress, that framework is now the Bipartisan Infrastructure Law, and we are delivering on that promise for every person in this country.

At EPA, we are delivering on that promise by investing in America—as the President says, from the bottom up and the middle out—and by upgrading and renewing our Nation's water infrastructure. We're working to ensure that no community, however small, rural, or disadvantaged, is left out. As you know, the Bipartisan Infrastructure Law includes more than \$50 billion for our Nation's water infrastructure—and an unprecedented \$13 billion of it will flow through our Clean Water State Revolving loan funds. These investments will play a critical role in reversing decades of underinvestment, disinvestment, and neglect. Aging wastewater and stormwater systems dot our counties and states. Many of them are still addressing 20th century challenges, some even using 19th century pipes, while striving to meet the pivotal issues that will define the 21st century, from climate change to per- and polyfluoroalkyl substances (PFAS).

As we look to FY 2024, we will continue our close partnership with states to implement the Bipartisan Infrastructure Law and look to build on that success with the President's budget. The Budget provides more than \$4 billion for water infrastructure, an increase of \$1 billion over the 2023 enacted level—including more than \$1.6 billion to the Clean Water State Revolving Fund. The Budget also provides resources for additional infrastructure grant and loan programs administered by EPA, such as \$280 million to the Sewer Overflow and Stormwater Reuse program. In addition to creating hundreds of thousands of good-paying American jobs, these resources would advance efforts to upgrade wastewater, stormwater, and drinking water infrastructure nationwide, with a focus on underserved and small rural communities that need these resources most.

While it lies outside the jurisdiction of this committee, I will also note that, to further the President's goal of replacing all lead pipes within the next decade, the Budget proposes \$219 million for two grant programs dedicated to remediating lead contamination in water—EPA's Reducing Lead in Drinking Water grant program and EPA's Lead Testing in Schools grant program.

Also included in this budget is \$80 million to support the Water Infrastructure Finance and Innovation Act (WIFIA) loan program. Earlier this year, EPA celebrated the closing of its 100th WIFIA loan. Since its establishment in 2014, this EPA program has helped communities leverage more than \$18 billion in credit assistance to finance more than \$38 billion in water infrastructure projects around the

Nation. By providing lower-than-market interest rates, WIFIA loans for these projects have saved communities—like Pflugerville, TX and Los Angeles, CA—more than \$6 billion, which can be used for additional infrastructure investment and to keep rates affordable for families and small businesses. These WIFIA-financed projects have created more than 130,000 jobs and benefited more than 57 million people, demonstrating that WIFIA credit assistance is an effective tool to help address critical water infrastructure needs.

LEVEL THE PLAYING FIELD FOR COMMUNITIES THROUGH TECHNICAL ASSISTANCE

We also know that to protect public health and to ensure clean water across America, we need to ensure that ALL communities benefit from these investments. Too many disadvantaged communities across rural, suburban, and urban areas have not received their fair share of funding. We can and will do better. That's why we are standing up an unprecedented technical assistance effort to level the playing field for communities who have too often been left behind. In the last year, we've committed \$150 million to provide technical assistance through our 29 Environmental Finance Centers around the country, and launched two partnership initiatives—the Closing the Wastewater Access Gap initiative and our Lead Service Line Accelerators initiative. These efforts will develop capacity to unlock investments in underserved communities, and our FY 2024 budget request will help us expand on those efforts.

For example, in addition to continuing to provide resources to support communities through our Environmental Finance Centers, the budget also funds all of the technical assistance and targeted grant programs from the Drinking Water and Wastewater Infrastructure Act (DWWIA) of 2021, which was authorized in the Bipartisan Infrastructure Law. These include an \$18 million dedicated technical assistance grant program for wastewater treatment works, a \$10 million Small and Medium Publicly Owned Treatment Works Circuit Rider Program, a \$25 million Clean Water Infrastructure Resilience and Sustainability Grant Program, and a \$20 million Wastewater Efficiency Grant Pilot Program. Strategic technical assistance will be central to the legacy that the Bipartisan Infrastructure Law will deliver for the American People.

PROTECT AMERICA'S TREASURED WATERS THROUGH PLACE-BASED INVESTMENTS

From the Great Lakes to the Gulf of Mexico, and from Albemarle Sound to Puget Sound, the United States is home to treasured water bodies of ecological, cultural, and economic significance. With partnerships that span across federal agencies; state, Tribal, and local governments; and interstate and non-governmental organizations, these financial assistance programs leverage federal resources to achieve outside impacts for communities across America's Atlantic, Pacific, Gulf, Caribbean, and inland coasts. The Budget invests nearly \$715 million in our Geographic, National Estuary, and other place-based and coastal programs, which deliver technical and financial assistance to address critical—and locally identified—watershed priorities. These resources will help clean up pollution, reverse habitat loss, build coastal resilience to storms and other climate impacts, and protect culturally and economically important fisheries and waters beloved by communities across America.

PROVIDE FUNDING AND ASSISTANCE TO STATES TO MITIGATE POLLUTION AND IMPROVE WATER QUALITY

The Budget provides \$493 million in financial support through Categorical Grant Programs to EPA's Tribal, state, and local partners to support their efforts in implementing key provisions of the Clean Water Act. Within this amount, \$279 million is provided to the Section 106 Grants Program, an increase of more than \$42 million from the FY 2023 enacted budget. These resources would fund state, interstate, and Tribal water pollution control programs to assess and mitigate pollution, and expand and implement water quality programs to protect and restore our Nation's rivers, lakes, streams, and wetlands. The Budget also includes \$189 million for the Section 319 Grants Program, which is an important tool to reduce nonpoint source pollution and restore impaired waterbodies to meet water quality standards, and protect clean waters.

ACCELERATE EFFORTS TO PROTECT PEOPLE FROM PFAS POLLUTION

In FY 2024, EPA will continue to work across environmental programs to advance agency efforts to tackle PFAS pollution. As part of the President's commitment to addressing PFAS pollution, and consistent with EPA's PFAS Strategic Roadmap,

the FY 2024 Budget provides approximately \$170 million for EPA's overall PFAS efforts, including work to increase our understanding of PFAS and their human health and ecological effects; minimize PFAS entering our Nation's waters; and protect people and aquatic life from these chemicals. The Budget requests almost \$60 million to EPA in additional funding for water programs to enable the Agency to move more quickly on policy and regulatory actions across relevant statutory authorities. This includes not only significant Clean Water Act efforts within this Committee's jurisdiction—such as making critical progress on Effluent Limitations Guidelines for industries that discharge PFAS—but also the Agency's recent proposal under the Safe Drinking Water Act to set enforceable limits for six PFAS in drinking water. If finalized, this rule will prevent thousands of deaths and tens of thousands of avoidable illnesses. EPA will also continue its efforts in FY 2024 to develop analytical methods, drinking water health advisories, toxicity values, and risk assessments, as well as risk communication and other tools to support states, tribes, and localities in managing PFAS in their communities. This funding complements and informs the implementation of the nearly \$10 billion in Bipartisan Infrastructure Law resources dedicated to addressing PFAS and other emerging contaminants.

ENSURE CLEAN WATER AND HEALTHY ECOSYSTEMS ACROSS THE NATION

We are also working to ensure that EPA fulfills its statutory responsibilities, included under the Clean Water Act, to protect the health of the American people and the integrity of our waters. As we do so, we are committed to grounding our regulatory and rulemaking approaches on a foundation of science, the law, and partnerships with our state and Tribal co-regulators—and informed by robust stakeholder engagement.

The Budget includes \$268 million for the Surface Water Protection Program, an increase of \$43.5 million over the FY 2023 enacted level, to support efforts to protect, improve, and restore the quality of our Nation's coastal waters, rivers, lakes, wetlands, and streams.

CONCLUSION

Our ability to achieve these goals—ensuring clean and safe water, protecting water resources and wetlands, and improving our Nation's wastewater and stormwater infrastructure—will be determined by the strength of our partnerships. None of these goals will be possible without strong collaboration between the Executive and Legislative branches. That is why I am so honored to join you today. Once again, Chairman Rouzer, Ranking Member Napolitano, and Members of the Subcommittee, thank you for the opportunity to discuss the FY 2024 President's Budget for the EPA's National Water Program. I look forward to answering any questions you may have.

Mr. ROUZER. Thank you, Ms. Fox.
Ms. Giner.

TESTIMONY OF MARIA-ELENA GINER, Ph.D., P.E., COMMISSIONER, UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION

Ms. GINER. So, this is my first time doing this. So, thank you for the opportunity to do this.

My name is Maria-Elena Giner. I am from the International Boundary and Water Commission.

Chairman Rouzer, Ranking Member Napolitano, and members of the subcommittee, thank you so much for this opportunity to testify regarding our fiscal year 2024 budget.

The U.S. IBWC, or the International Boundary and Water Commission, may be one of the most interesting agencies you've never heard of. Our mission is part engineering and part diplomacy. We resolve issues that arise in applying the U.S.-Mexican water and boundary treaties along the 2,000-mile border.

The agency maintains two international wastewater treatment plants, two major international storage dams with hydroelectric powerplants, four diversion dams, over 500 miles of levees, and 20,000 acres of flood plain. We also manage water deliveries from the Colorado River to Mexico and from six tributaries from Mexico to the Rio Grande.

At a time of historic drought, our value is even more important as we try to conserve water, to leave water in the Colorado River, as well as to seek deliveries of water from Mexico to the Rio Grande for use by our farmers in south Texas.

U.S. IBWC appreciates Congress' increased attention to environmental justice. We serve mostly impoverished communities. Many of our border counties have less than one-half of per capita income than their State averages, and the combined local and Federal dollars have not met growing infrastructure needs.

These vulnerable communities that we have been entrusted to serve with their youthful populations and heavy communities of color need our help.

My staff also faces some of the same resource challenges as the public they serve. We regularly borrow equipment from field offices hundreds of miles away. It has been hard to recruit and retain employees in the remote border locations of most of our 11 field offices.

Fortunately—and we are very grateful for the fiscal year 2023 funding increases. U.S. IBWC is now investing in heavy equipment and raising pay for hard-to-fill positions. In the coming months, we will be contracting an asset management plan to identify the maintenance needed to maintain this federally owned infrastructure, and offset any expensive future capital repairs.

Now, from our construction priorities for fiscal year 2024, we envision using our 2024 funding for three major projects. One is for Amistad Dam which is a dam that is ranked 11th in conservation capacity in the United States and has been categorized by the Army Corps of Engineers as potentially unsafe. It is the main source of water for south Texas.

IBWC plans to install grout curtains in the dam's base, while drilling to determine the depth and cost of a cutoff wall. To date, we have received \$30 million in multiple-year appropriations to get us started.

In Nogales, Arizona, U.S. IBWC will spend \$600,000 to repair an international wastewater treatment plant which is currently in noncompliance, because it has exceeded its plant capacity in recent months. These excess flows, as well as high levels of metals and nitrates, have led to noncompliance with the Clean Water Act standards.

All of our fiscal year 2024 construction funds, nearly \$40 million in the budget of fiscal year 2024, will be realigned to rehabilitate the South Bay International Wastewater Treatment Plant in California. After a recent assessment of the plant's condition, U.S. IBWC has estimated that the repairs cost is on the order of \$105 million and must be done before we can expand the plant with the \$300 million that has been allocated under the U.S.-Mexico-Canada Agreement.

The rehabilitation's high pricetag results from an aging plant built in 1997 and years of deferred maintenance. Between 2010 and 2020, U.S. IBWC only made \$4 million worth of capital repairs at the plant. Once expanded, the plant will reduce cross-border wastewater flows by as much as 80 percent, and reduce the number of norovirus-related illness by up to two-thirds.

My testimony provides details of the fiscal year 2024 budget request for \$104.824 million.

Thank you.

[Ms. Giner's prepared statement follows:]

**Prepared Statement of Maria-Elena Giner, Ph.D., P.E., Commissioner,
United States Section, International Boundary and Water Commission**

Thank you for inviting me to testify regarding the Fiscal Year 2024 budget request for the U.S. Section of the International Boundary and Water Commission, United States and Mexico (USIBWC). We welcome the opportunity to discuss opportunities to improve infrastructure and the quality of life in the United States along the U.S. border with Mexico.

Everything the USIBWC does safeguards the lives, health, property and prosperity of U.S. citizens residing in the border area, whether agency activities are related to flood prevention, water pollution mitigation, or the efficient and equitable distribution between the United States and Mexico of water from the Colorado River and the Rio Grande. Promoting environmental justice is at the forefront of our concerns, since the border communities we serve are some of the most disadvantaged in the United States: the average income in most border counties is less than half the average of the states in which they are located. These communities often lack the resources to effectively manage challenges such as the historic drought in the American Southwest or cross-border wastewater flows entering the United States from Mexico.

The USIBWC's mission is to provide binational solutions to issues that arise during the application of treaties between the United States and Mexico regarding, among other things, water quality and flood control in the border region, including constructing, rehabilitating, operating and maintaining flood control systems, storage dams with hydroelectric power plants, and wastewater treatment plants, as directed by Congress. The International Boundary and Water Commission (IBWC) is an international body composed of a U.S. Section and a Mexican Section, each headed by an Engineer Commissioner appointed by the President of their country. Each Section is funded and administered independently of the other. The U.S. Section is an independent federal agency that operates under the foreign policy guidance of the U.S. Department of State and is funded through the annual Department of State, Foreign Operations, and Related Programs Appropriations Act.

For over a century, the IBWC has worked to promote bi-national cooperation and partnership, dating back to the temporary boundary commissions established by the Treaty of Guadalupe, the Gadsden Treaty, and an 1882 Convention to map the international boundary between the United States and Mexico. The U.S. and Mexican governments established what became the IBWC (then the International Boundary Commission) in 1889, initially to resolve boundary-related differences arising along the border. The 1944 U.S.-Mexico water treaty established the key organizational components of the modern-day IBWC and its two sections. Today, the IBWC is charged with applying binational boundary and water treaties, including water distribution and flood management of the transboundary rivers.

The USIBWC's activities include:

- preservation and demarcation of the international land boundary along the States of California, Arizona and New Mexico, and Texas, including at international ports of entry;
- preservation and demarcation of the international boundary defined by the Rio Grande along the State of Texas and the Colorado River along the State of Arizona, including at international bridges;
- determination and accounting for national ownership of the waters of the Rio Grande and Colorado River and allocation of water between Mexico and the United States during severe drought;

- operation and maintenance of flood control systems consisting of over 500 miles of river and floodway levees, 20,000 acres of floodplains, 700 hydraulic structures, 100 hydrologic gaging stations, and four diversion dams;
- operation and maintenance of two international storage dams and associated hydro-electric power plants;
- operation and maintenance of two wastewater treatment facilities in the United States;
- maintenance of two international bridges in the El Paso/Ciudad Juarez area;
- water quality monitoring for bi-national IBWC-approved projects and exchange of data; and
- review of all plans for new international bridges, border crossings, and pipe and power lines that cross the international boundary to ensure compliance with boundary treaty requirements.

PRIORITY ISSUES

Water Delivery

As the Western United States faces unprecedented severe drought conditions, the USIBWC's ability to negotiate international agreements, known as Minutes, with Mexico under the 1944 Water Treaty allows our respective countries to develop solutions to current issues, and our water accounting function helps ensure the equitable distribution of the waters of the Rio Grande and Colorado Rivers is in accordance with the treaties and Minutes. For the Colorado River basin, USIBWC helped develop and implement Minutes 319 and 323, ensuring that if the United States makes a shortage declaration, Mexico will take cuts to Colorado River water deliveries along with the Lower Colorado River Basin in the United States. The Bureau of Reclamation made shortage declarations in 2021 and 2022, forcing automatic water delivery cuts, and expects to make a similar declaration in August 2023. USIBWC's budget provides for work to implement drought planning and water conservation in the Colorado River Basin, including working with Reclamation and Mexico to prepare to implement cuts in Mexico. We are consulting with other federal agencies with the aim of building a climate science department within the USIBWC, to better forecast anticipated precipitation levels.

Since 2021, Mexico has saved water under the Binational Water Scarcity Contingency Plan agreed to in Minute 323, a plan that complements savings undertaken in the United States under the domestic Lower Basin Drought Contingency Plan approved by Congress in 2019. Under the terms of Minute 323 and related Minutes, Mexico has conserved hundreds of thousands of acre-feet of water, adding to volumes conserved in the United States, to help boost Lake Mead elevation and delay or reduce mandatory reductions to users in both countries. Past Mexican conservation has raised Lake Mead's elevation as much as three feet.

On the Rio Grande in Texas, under the 1944 Water Treaty, Mexico is required to deliver water from the Rio Grande to the United States, meeting designated volumes for five-year cycles. For the water delivery cycle that ended in October 2020, USIBWC was instrumental in ensuring Mexico finished without a water debt. As part of the 2020 IBWC agreement stipulating arrangements for Mexico's end-of-cycle water deliveries, the two countries agreed to negotiate another agreement by December 2023 to ensure more predictable and reliable water deliveries. The U.S.-Mexican negotiations on this latest Rio Grande agreement are well under way.

In the current treaty-designated five-year water delivery cycle, Mexico has delivered volumes near historical lows, providing only 45 percent of the volumes expected at this stage. The growing shortfalls could become unmanageable, making it difficult for Mexico to comply with treaty requirements. USIBWC is negotiating with Mexican officials to provide tools to make deliveries earlier in the five-year cycle.

Sanitation—San Diego, California

Another of the Commission's top priorities is addressing sanitation conditions along the U.S.-Mexico border. To that end, USIBWC operates and maintains two binational wastewater treatment facilities at San Diego, California (South Bay International Wastewater Treatment Plant) and Nogales, Arizona, and participates with Mexico in its operation of a facility in Mexico that discharges into the Rio Grande River near Laredo, Texas. In the early 1990s when NAFTA was being drafted and implemented, Mexico made major investments in sanitation infrastructure with substantial U.S. cost-shares through entities like the Border Environment Cooperation Commission, the North American Development Bank, and U.S. Environmental Protection Agency (EPA). The San Diego wastewater treatment facility was also constructed during this time. However, rapid economic and demographic growth along Mexico's northern border with the United States did not bring proportionate Mexi-

can investments in infrastructure or maintenance of the existing infrastructure, particularly in water and sanitation. As a result, much of that infrastructure is coming to the end of its useful life. This results in increased operations and maintenance costs at USIBWC's facilities and recurring sewage spills across the border into the United States.

For decades, nearby communities have had to cope with the transboundary wastewater flows between Tijuana and San Diego. Despite massive U.S. investment in the City of Tijuana's collection system, that system has aged, and the city's population has grown since the mid-1990s. During rainstorms or wet weather in Tijuana and when pipelines or pumps break, water flows to the Tijuana River and canyons and mixes with unknown amounts of urban runoff, treated effluent from the Tijuana River, and wastewater in Mexico before flowing into the United States. During dry weather, the runoff is largely groundwater and some untreated flows from illegal connections in Mexico (dry-weather flows); during storms, this runoff mixes with large amounts of rainfall (wet-weather flows). Thus, transboundary flows that cross the U.S.-Mexico international border can transport pollutants generated in Mexico that impact downstream surface waters in the United States. A 2017 Scripps Institution of Oceanography study identified 34,000 illnesses per year in nearby communities that the contamination could cause.

Among the factors leading to transboundary flow incidents are aging and unmaintained Tijuana sewer lines and pumps, power outages, and wet weather flows from storms that overwhelm the capacity of pumps in Mexico that are diverting sewage flows away from the United States. USIBWC uses its relationships with Mexican officials to leverage larger solutions than one small agency can achieve on its own. We consult closely with U.S. stakeholders and encourage Mexican officials to access federal, state, local and private sources to fund repairs.

In the mid-1990s the IBWC constructed the South Bay plant to treat a limited amount of Mexican wastewater sent to the plant primarily from the City of Tijuana's collection system, before discharging the treated effluent offshore in the Pacific Ocean. The collection system in Mexico includes a small-capacity pump in the Tijuana River in Mexico to divert to the South Bay plant the dry-weather flows that occur in the river on a regular basis. However, there are two scenarios when the flows from Mexico overwhelm South Bay's capacity. First, when it rains, wastewater mixes with stormwater in the Tijuana River and canyons, exceeding Mexico's capacity to capture the river flows and exceeding the South Bay plant's treatment capacity. The river simply cannot be stopped from flowing into the United States and no single wastewater treatment plant could treat the entire river, which is part of the drainage of a watershed that is over 1,700 square miles in size.

Second, Mexico's wastewater system sometimes sends flows to the South Bay plant that exceed its limited capacity. Over the last several years, pump station failures and leaks in Tijuana's sewage pipelines have become particularly acute, leading to increased wastewater flow to the United States. These excess flows have put tremendous strain on the South Bay plant's facilities, to include equipment failures and loss of primary treatment capability. Plant operators have not been able to perform the essential repairs and maintenance needed to keep the plant in proper operation. Because of the loss of primary treatment and other damaged equipment, plant effluent has exceeded the Clean Water Act standards in 15 of 36 categories on over 100 occasions since August 2022, resulting in impaired water quality discharges.

San Diego area communities have expressed growing frustration with the volumes of untreated wastewater in the Tijuana River, and with reported shortfalls in funding for the planned rehabilitation and expansion of the South Bay plant. In June, 18 municipalities in the San Diego area wrote the White House Council on Environmental Quality to request a federal emergency declaration for the Tijuana River Valley and the shoreline of Imperial Beach. The aim of the requested declaration is to coordinate a multi-agency response and obtain needed funding.

The USIBWC has worked closely with EPA to coordinate planning for a major expansion of the South Bay plant. In January 2020, Congress appropriated \$300 million for border area infrastructure, as part of the United States-Mexico-Canada Agreement (USMCA) implementing legislation. The funds were appropriated to EPA to design and construct new infrastructure in coordination with eligible public entities. EPA's environmental review of its priority project, the planned South Bay plant expansion, concluded successfully with the June 12, 2023 Record of Decision. The decision moved the project to the design and construction phase, and the USIBWC began the pre-solicitation process the same day with a "Sources Sought" announcement to produce market research and promote bidder interest in a contract to perform the rehabilitation and expansion of the plant. Last year, Congress provided USIBWC with the authority to receive EPA funds for the design and construction

of the project. Once expanded, the plant will reduce cross-border wastewater flows by as much as 80%, and reduce the number of norovirus-related illnesses by up to two thirds. In addition, the President's budget requests additional authorities for the USIBWC to receive funds from federal and non-federal entities all along the U.S.-Mexico border. The new authorities would match the contributed funds authorities already enjoyed by other U.S. infrastructure agencies, and any contributed funds could be used in connection with the South Bay plant expansion or a wide range of activities along the 2,000-mile border with Mexico.

Under an August 2022 IBWC Minute, Mexico's federal government committed to \$144 million in short-term projects to improve wastewater management in the Tijuana area. These projects, the counterpart to promised U.S. projects such as the South Bay plant expansion, include repairs to wastewater collectors, pump station upgrades, and projects to re-use treated wastewater. Mexico's largest planned project is the construction of a new wastewater treatment plant at San Antonio de los Buenos on the Pacific coast, which will curb pollutants carried to San Diego area beaches when ocean currents drift northward. The solicitation for the construction is slated to go out this Autumn. In May, EPA and the Mexican National Water Commission announced the near-completion of the Oriente Collector rehabilitation (it was subsequently completed), and plans to replace the International Collector and provide a rehabilitation and flood protection for Pump Station 1, with each country providing roughly half of the nearly \$30 million cost.

Sanitation—Nogales, Arizona

Southeastern Arizona has been impacted by deteriorating international wastewater pipelines in Santa Cruz County known as the Nogales Main Collector Line (Trunkline) and the International Outfall Interceptor (IOI). Wastewater from Nogales, Sonora, Mexico as well as Nogales and Rio Rico, Arizona, travels through the wastewater pipelines to the Nogales International Wastewater Treatment Plant (NIWTP), which is operated and maintained by the USIBWC. The condition of the IOI deteriorated over the years due to inadequate maintenance by local authorities. Through multiple-year appropriations, USIBWC has received \$34 million in funding to completely rehabilitate the pipeline by installing a new liner inside it. The Arizona Department of Environmental Quality obtained state and non-governmental funds for a cost share with the federal government. The multi-year rehabilitation of the Nogales IOI is needed to avoid adverse environmental impacts and to ensure reliable operation of the wastewater collection and treatment system.

With federal investment in the IOI amounting to tens of millions of dollars, the USIBWC seeks to ensure proper maintenance of the rehabilitated pipeline. The USIBWC supports congressional efforts to provide authorization and funding to transfer ownership of the IOI to the USIBWC. The USIBWC has the expertise to ensure proper maintenance of the IOI, and unique international factors make it appropriate for the federal government to take a lead role. Almost 90% of the wastewater carried through the IOI for treatment at NIWTP originates in Mexico. In addition, Transnational Criminal Organizations regularly break into the IOI to insert drug bundles in Mexico that they retrieve downstream in the United States. These intentional punctures greatly complicate maintenance of the pipeline. By ensuring proper maintenance of the IOI, USIBWC will avoid the periodic ruptures that have caused raw sewage to flow within the Nogales, Arizona community.

The amount of Mexican sewage treated at the NIWTP has often exceeded agreed limits. In addition, the transboundary flows sometimes include heavy metals primarily from industries in Mexico—the treatment plant cannot remove these contaminants. The metal components, as well as high levels of nitrates in the wastewater, have on a number of occasions caused the plant's non-compliance with Clean Water Act standards. The City of Nogales, Sonora has also accumulated large unpaid balances for the treatment of its wastewater at NIWTP. In coordination with the U.S. Department of State, USIBWC has repeatedly pressed Mexico's federal government to pay the ballooning debt on behalf of the local utility, which currently amounts to almost \$5 million.

Flood Control and Dam Safety—Texas

Dam safety is another one of USIBWC's top priorities. While the Agency does not seek additional funds for its Safety of Dams Program this year, it will use unobligated carryover balances to develop and implement risk mitigation plans. USIBWC is working with the Mexican Section to determine the best option to reduce the risk of dam failure, which will require a cost share with Mexico. The most recent safety inspections have identified urgent or high priority deficiencies at five of the six Rio Grande dams operated by the U.S. Section or jointly with the Mexican Section. American, International, Retamal, and Falcon Dams received a Dam Safety Action

Classification (DSAC) of “High Priority, Conditionally Unsafe,” while Amistad Dam received a DSAC rating of “Urgent, Potentially Unsafe.” The U.S. Army Corps of Engineers will perform updated safety inspections starting in November.

A minimum of \$30 million in unobligated carryover funds will be used to implement mitigation measures at Amistad International Dam. The Mexican Section of the IBWC hopes later this year to solicit bids on a contract to install two grout curtains in the base of the dam, and at the same time do exploratory drilling to determine the required depth and cost of a composite cut-off wall. About 98 percent of the water used in the Lower Rio Grande Valley of Texas and Mexico is released from Amistad and Falcon Dams, providing potable water for 1.5 million U.S. and Mexican border residents. Failure of either of these dams would have catastrophic consequences in terms of potential loss of life and property, and damage to the economy in the Lower Rio Grande Valley.

COMPONENTS OF AGENCY’S PROPOSED 2024 BUDGET

The President’s FY 2024 budget request for the USIBWC Salaries and Expenses (S&E) Account is for \$64,800,000, an increase of \$6,865,000 above the FY 2023 Appropriation of \$57,935,000. The requested funds will allow the USIBWC to continue critical or urgent maintenance and repairs of its facilities and infrastructure for storage, diversion, and flood control of river waters, as well as maintenance of USIBWC sanitation projects. The request funds 263 positions and administrative costs of the U.S. Section, as well as the funds needed for the continued operation and maintenance of the U.S. portion of bi-national infrastructure along the border. That infrastructure is required to ensure compliance with treaties and other international agreements between the United States and Mexico that are within the purview of the IBWC.

As mentioned earlier, the President’s budget requests additional authorities for USIBWC—a contributed funds authority. The purpose of the new authority, which other U.S. infrastructure agencies possess, would be to accomplish the USIBWC mission of water supply, flood protection, eliminating cross-border wastewater flows, and boundary maintenance.

The USIBWC has eight field offices and four satellite offices that span the border from San Diego, California to Brownsville, Texas. Staff in these offices operate and maintain projects, including many operated jointly with Mexican Section personnel based in companion offices on the Mexican side of the border. Of the \$64.8 million request, \$43.4 million will support continued operation and maintenance (O&M) costs of existing infrastructure. This activity includes the measurement and determination of the national ownership of boundary waters.

The S&E funding also covers the U.S. share of O&M for two international wastewater treatment plants, two major international storage dams with associated hydroelectric power plants, four diversion dams, river channel and levee projects, and boundary demarcation activities.

The remaining roughly \$21.5 million that is requested for the S&E Account includes \$13.9 million for administration, which covers negotiations and supervision of joint projects with Mexico to solve international boundary and water problems; overall management of the USIBWC; formulation of operating policies and procedures; and financial management, information technology (IT) infrastructure modernization and administrative services to carry out international obligations of the United States consistent with international agreements and other authorities.

In addition, \$7.5 million is requested to cover activities in USIBWC’s Engineering Department, which support our projects and include technical and environmental planning, engineering design and hydraulic studies, construction oversight of new projects, and engineering guidance. Other areas include environmental monitoring and compliance; surveys and mappings, and investigations to determine the need for and feasibility of future projects. Engineering funds also cover the design and management of projects, surveys, studies, and investigations to address international boundary and water problems with Mexico in accordance with IBWC treaties and agreements. The IBWC participates in multi-agency water quality programs in the Rio Grande, Colorado River, New River, and the Pacific Ocean.

The FY 2024 Construction Account request of roughly \$40 million is over \$13 million below the FY 2023 President’s Budget of over \$53 million. Initially, USIBWC intended to use these requested funds for a variety of projects; however, virtually all of the funds will be realigned to pay unexpectedly high costs to rehabilitate the South Bay International Wastewater Treatment Plant (SBIWTP). Only \$600,000 of the \$40 million construction account will remain dedicated to the initially intended function: improvements at the Nogales International Wastewater Treatment Plant, where excess flows from Mexico have caused plant non-compliance with Clean

Water Act standards. All other projects not related to the two U.S.-based wastewater treatment plants will be deferred for one year.

At SBIWTP, the USIBWC hired a consulting firm as a project manager to help plan for the design and construction of the plant expansion, which will use USMCA funds to be transferred from EPA. When the project manager performed an assessment of the plant's current condition, they found a large number of essential repairs. The need for extensive repairs is due to the age of the plant, where many components were nearing the end of their life cycles, and low levels of capital repairs in the preceding 10–15 years. The project manager identified \$100–\$200 million in needed repairs, of which an estimated \$105 million worth of repairs are recommended as part of the plant's expansion. IBWC is consulting with EPA, the State Department, and other partners on how these recommendations could be addressed.

The USIBWC welcomes your support as we implement these important projects as part of our mission to address boundary and water issues along the U.S.-Mexico border. Thank you for the opportunity to testify.

Mr. ROUZER. Thank you. I thank the gentlelady.
Mr. Aspey.

TESTIMONY OF LOUIS ASPEY, ASSOCIATE CHIEF, NATURAL RESOURCES CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. ASPEY. Thank you, Chairman Rouzer, Ranking Member Napolitano, and members of the subcommittee. Thank you so much for the opportunity to provide testimony.

Mr. ROUZER. Pull your microphone a little closer.

Mr. ASPEY. Is that better?

I am a first time, too. Thank you.

Thank you very much for the opportunity to provide testimony on the U.S. Department of Agriculture Natural Resources Conservation Service watershed programs.

My name is Louis Aspey, and I am honored to serve as Associate Chief of NRCS. I began my career as a civil engineer, and have worked on watershed projects for the majority of my professional life. Like you, I have seen firsthand the benefits these projects provide to citizens and communities throughout America.

As one resident with small children in West Virginia said to me after a project was completed a few years ago, I don't need to worry when it rains anymore at night.

NRCS delivers voluntary programs and services that enable producers, landowners, Tribal nations, and others to enhance land stewardship, improving the viability of agriculture operations and the sustainability of the Nation's soils, water, and related natural resources of non-Federal lands.

About 70 percent of the Nation's land is privately owned, making stewardship by private landowners and managers critical to the health of our agriculture lands and economies. NRCS provides financial assistance and science-based technical assistance to help our customers better manage the natural resources of their land.

Although we administer a wide range of conservation programs, today I will focus on NRCS watershed operations and watershed rehabilitation programs. Through both of these, NRCS collaborates with State and local agencies, Tribal governments, and other Federal agencies to prevent damage caused by erosion, flood water, sediment, and provide benefits such as water supply and recreation.

NRCS works with local government sponsors and individual landowners to solve natural resource concerns and related economic problems within watersheds. The watershed operations programs have provided communities with flood prevention, municipal and irrigation water supply, recreation, and wildlife habitat improvement for over 60 years. It has assisted local project sponsors to plan, design, and construct nearly 12,000 dams since 1948. Over half of these dams have now exceeded their planned life, and over two-thirds will reach this milestone within the next 5 years.

Projects such as channels, agriculture water management, and flood plain relocation are also part of this program, which illustrates the broad flexibility the authority provides to solve complex water resources problems on a landscape scale.

Watershed operations projects are located in all 50 States and Territories, and NRCS estimates the average annual benefits to be \$2.7 billion. This estimate considers categories such as flood damage reduction benefits to homes, businesses, infrastructure, and agriculture.

In fiscal year 2022, NRCS received \$600 million in discretionary funding for this program, including \$500 million from the Bipartisan Infrastructure Law. Under BIL, priority was given to projects in limited resource areas and historically underserved communities where there is a severe need for watershed infrastructure to protect communities from flooding and disaster and address major watershed issues. The remaining \$100 million was split across 137 projects in 37 States and Territories.

In fiscal year 2022, NRCS also received \$50 million in mandatory funding that was split between 261 projects in 39 States and Territories.

The watershed rehabilitation program provides assistance with the planning, design, and implementation needed to bring aging dams up to current engineering criteria. We prioritize dams that pose the greatest risk to public safety. Our efforts extend the service life of dams, bringing them into compliance with applicable safety and performance standards.

In fiscal year 2022, the watershed rehabilitation program received \$1 million in mandatory funding, and \$118 million from the Bipartisan Infrastructure Law. This investment recognizes the critical role these structures play in flood management, water supply, erosion control, agriculture productivity, recreation, and wildlife habitat. This funding helps to repair aging infrastructure, creates jobs and commerce, and protects homes and families.

Of particular importance, almost 2,500 watershed dams are currently classified as high hazard, which means they have the potential for loss of life if they should fail. Less than 1,000 of those dams were originally designed as high-hazard criteria, so, most do not meet current safety standards.

Watershed dams are federally assisted, but not federally owned. Local project sponsors continually rely on NRCS to provide them technical assistance on operation and maintenance of their dams, as well as technical and financial assistance to rehabilitate them to current safety standards.

In conclusion, I deeply appreciate Congress' continued support for NRCS and our work to ensure the safety and viability of our small watersheds and voluntary conservation on working lands.

Thank you very much, again, for the opportunity to be here with you today.

[Mr. Aspey's prepared statement follows:]

**Prepared Statement of Louis Aspey, Associate Chief, Natural Resources
Conservation Service, U.S. Department of Agriculture**

Subcommittee Chairman Rouzer, Subcommittee Ranking Member Napolitano, and Members of the Subcommittee, thank you for the opportunity to provide testimony on U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) watershed programs.

NRCS BACKGROUND

The mission of USDA's NRCS is to deliver conservation solutions, so agriculture producers can protect natural resources and feed a growing world. NRCS provides programs and services that enable people to enhance their land stewardship activities to protect the viability of their agriculture operations and the nation's soil, water, and related natural resources on non-Federal lands. NRCS supports the rural economy by helping private landowners and producers, who make day-to-day decisions about natural resource use and management on non-Federal lands, implement conservation measures through technical and financial assistance. Technical assistance provided to farmers, ranchers, foresters, and other private landowners supplies the knowledge and tools they need to conserve, maintain, and restore natural resources on the lands they manage. Financial assistance partially offsets the cost to install conservation practices necessary to sustain and enhance natural resources and improve wildlife habitat. About 70 percent of the land in the United States is privately owned, making stewardship by private landowners and land managers critical to the health of our agricultural economy. In addition to working directly with private landowners, NRCS also works with tribal Nations, units of government, and other eligible sponsors (e.g., water authorities) to deliver technical and financial assistance.

Conservation Technical Assistance: The ability of NRCS to provide Conservation Technical Assistance (CTA) to farmers, ranchers, foresters, and landowners across the country is core to our mission. Through CTA, NRCS works with landowners and managers to develop conservation plans that outline the specific conservation activities needed to improve farm operations and enhance farm environmental sustainability. NRCS partners with third-party private sector entities (known as Technical Service Providers, or TSPs) to collaborate and provide technical assistance for conservation planning and activities. Currently, there are 1,012 individuals and more than 115 businesses serving as certified TSPs that are available to help program participants apply conservation efforts through programs such as the Environmental Quality Incentives Program (EQIP), the Conservation Stewardship Program (CSP), the Agricultural Conservation Easement Program (ACEP), the Agricultural Management Assistance Program (AMA), Conservation Reserve Program (CRP), CTA, and Watershed programs. The need for TSPs is growing and NRCS has taken steps to improve program efficiency through an improved certification process where certification takes 60 days or less; an improved certification system where administrative burdens are removed; simplifying the certification process; and adding staff resources to assist TSPs; and more.

Conservation Programs: NRCS administers a wide range of Farm Bill conservation programs, including EQIP, CSP, ACEP, and the Regional Conservation Partnership Program. These programs make it possible to implement the conservation plans that resulted from CTA work. Additionally, while the Conservation Reserve Program (CRP) is administered by USDA's Farm Service Agency, NRCS provides technical assistance, conservation planning, and support for conservation practice implementation and management. NRCS conservation programs are carried out through local field offices that provide direct assistance to individual farmers, ranchers, foresters, and other private landowners to restore and improve our shared natural resources. Key priorities about the implementation of these programs and practices are made at the local level with input from Local Working Groups and State

Technical Committees to ensure local needs, which vary greatly across the country, are addressed through voluntary based NRCS programs.

NRCS WATERSHED PROGRAMS

Watershed and Flood Prevention Operations

Through the Watershed and Flood Prevention Operations (WFPO) account, NRCS cooperates with State and local agencies, tribal governments, and other Federal agencies to prevent damage caused by erosion, floodwater, and sediment to further the conservation, development, utilization, and disposal of water and advance the conservation and utilization of the land.

WFPO includes the Small Watershed Program, the Flood Prevention Operations Program, and may include activities under the Watershed Rehabilitation Program. The vast majority of NRCS watershed projects have been built pursuant to the authority of the Small Watershed Program under which NRCS works with local government sponsors and helps participants solve natural resource and related economic problems within watersheds. Watershed projects are limited to 250,000 acres and cannot include any single structure that provides more than 12,500 acre-feet of floodwater retention capacity, or more than 25,000 acre-feet of total capacity. Projects may include flood prevention and damage reduction, development of rural water supply sources, erosion and sediment control, fish and wildlife habitat enhancement, wetland creation and restoration, and increased recreational opportunities. NRCS provides technical and financial assistance to support plan development and project implementation.

NRCS can offer suggested conservation practices to individual landowners and work with local communities to create vital infrastructure protecting and restoring natural resources. NRCS financial and technical assistance for watershed projects includes dams that not only offer flood control, but can also offer critical fish and wildlife habitat, livestock water, recreation and in some cases municipal water.

Additionally, Flood Prevention Operations includes projects in 11 watersheds that were specifically authorized under the Flood Control Act of 1944 (P.L. 78-534) and are much larger than Small Watershed Program projects. The Flood Control Act placed a primary focus on watershed protection by preventing floodwater damage and stabilizing stream channels, tributaries, and banks to reduce erosion and sediment transport. The Watershed Protection and Flood Prevention Act extended these authorities to expand NRCS's ability for delivering additional conservation investments beyond those focused solely on flood damages. Through these programs, NRCS has assisted in the construction of more than 11,850 watershed dams that help mitigate flooding downstream, offer municipal and industrial water supply, provide recreation opportunities, and serve as a source of irrigation for our farmers and ranchers. These dams are located in 1,271 watersheds in 47 states and help protect numerous farms, businesses, and positively impact millions of people each day.

In FY 2022, the Agency received \$600 million in discretionary funding for the WFPO account, which included \$500 million from the Bipartisan Infrastructure Law. The \$500 million authorized in the Bipartisan Infrastructure Law has been allocated to new and existing watershed projects. NRCS also received \$50 million in mandatory funding in FY 2022. NRCS provided funding to 261 projects in 39 States and the territories of the Commonwealth of the Northern Mariana Islands (CNMI), Commonwealth of Puerto Rico, and the U.S. Virgin Islands. In selecting projects for funding, the Agency prioritized addressing drought in the western States, projects that would have a positive impact on historically underserved and tribal communities, and projects that involved sponsors who had not previously worked with the Small Watershed Program.

In FY 2023, the Agency received \$75 million in discretionary funding and \$50 million in mandatory funds for the WFPO account. NRCS continues to assess new, remedial and backlog projects submitted for funding across the county.

Watershed Rehabilitation Program

The Watershed Rehabilitation Program provides technical and financial assistance for the planning, design, and implementation of projects to rehabilitate and extend the service life of aging watershed dams and bring them into compliance with applicable safety and performance standards, or to decommission the dams so they no longer pose a threat to life and property. While the Watershed Rehabilitation Program is a separate account, its activities are included as part of WFPO. Passage of the Agriculture Improvement Act of 2018 (P.L. 115-334) also authorized \$50 million in mandatory funding for WFPO and the Watershed Rehabilitation Program, which prioritizes dams that pose the greatest risk to public safety. These dams are

classified as high hazard potential in the national dam safety classification system. All high hazard potential dam project requests from public sponsors will be rehabilitated before dams classified as low or significant hazard potential to public safety. The Watershed Rehabilitation Program provides up to 65 percent of the total cost for dam rehabilitation projects, including the acquisition of land, easements, rights-of-way, project administration, non-Federal technical assistance, and construction. NRCS provides technical assistance to conduct studies, develop rehabilitation plans, develop environmental impact statements, prepare the engineering designs, and provide construction management services. Local sponsors are required to provide 35 percent of the total project cost.

In 2022, the Watershed Rehabilitation Program received \$1 million in discretionary funding and \$118 million from the Bipartisan Infrastructure Law (BIL). From the BIL, \$101 million has been allocated to existing rehabilitation projects, and the \$17 million remainder will be used for new projects or existing projects as they progress to construction phases. This investment in watershed rehabilitation recognizes the critical role of these watershed structures in flood management, water supply, erosion control, agricultural productivity, recreation, and wildlife habitat. This funding helps to repair aging infrastructure, creates jobs and commerce, and protects homes and families. The agency continued to provide funding and promoted assessments of high-hazard potential dams, monitored costs, and examined the rehabilitation program to ensure equitable delivery in economically disadvantaged areas.

In 2022, 144 assessments of high hazard dams were funded. These assessments provided communities with technical information about the condition of their dams, and alternatives for rehabilitation of dams that do not currently meet Federal dam safety standards. From 2000 through 2022, 446 dams have been funded for rehabilitation. Of the 446 dams, 269 dams in 26 States were authorized for rehabilitation. There are 156 dams in the planning phase that are subject to funding priorities. Of the 269 dams that were authorized for rehabilitation, 176 have been rehabilitated and 39 are in the design and 23 are in the construction phase.

In 2023, the Watershed Rehabilitation Program received \$2 million in discretionary funding, and the Agency is working to ensure these resources are put to their best use. The reality is that many of the communities protected by the watershed dams that NRCS helped to establish are now vulnerable to flooding. Many dams have reached, or will soon reach, the end of their design life. There are currently 5,938 watershed dams that have reached the end of their originally designed lifespan. That total is estimated to increase to 6,392 by December 2023; 6,609 by December 2024; and 6,782 by December 2025. This has happened over time because dam spillway pipes have deteriorated, and reservoirs have filled with sediment. Additionally, the areas around many dams have changed as homes and businesses have been constructed on what was once agricultural land. A dam failure could pose a serious threat to the health and safety of those living downstream and to the communities that depend on the reservoir. Dam failure also could bring serious adverse environmental impacts.

DAMWATCH®: Dam safety is a critical concern as many of the watershed dams NRCS assisted local sponsors with construction financing were built in the 1950's, 1960's, and 1970's. Of the 11,800 NRCS assisted dams, 2,423 are high-hazard, meaning the potential for a loss of life should a dam failure occur. Many of these dams need upgrades to meet current public safety standards, and many more need key repairs to man-made components. NRCS has worked to help sponsors mitigate risk with DAMWATCH®. DAMWATCH® is a web-based application developed for NRCS to support watershed project sponsors with monitoring and managing NRCS-assisted dams. DAMWATCH® provides real-time monitoring of rainfall, snowmelt, stream flow, and seismic events that could pose potential threats to dam safety. The application can alert essential personnel when dams experience potentially hazardous conditions, allowing for the coordinated deployment of personnel and resources. NRCS and watershed project sponsors utilize DAMWATCH® to manage a proactive response through the application's "one stop shop" for accessing critical documents, databases, monitoring devices, and geospatial information.

PROGRAM IMPROVEMENTS

Over the past two years, NRCS identified strategies to improve watershed program delivery to meet increased workload and changing priorities. Measures adopted include refined agency policies, additional delegations of authorities to states, improved program reporting mechanisms, new standardized forms for funding requests and other decision points, and ongoing financial allocations to projects for improved project implementation as resources become available.

FISCAL YEAR 2024 PRESIDENT'S BUDGET OVERVIEW OF WATERSHED PROGRAMS

The fiscal year 2024 Budget proposes a funding level of \$1.250 billion for NRCS, a net decrease of \$718 million from the 2023 Enacted Budget. This includes a \$77.4 million increase from the 2023 Enacted Budget for Conservation Technical Assistance (CTA).

The FY 2024 Budget proposes \$175 million in discretionary funding for WFPO and \$10 million for the Watershed Rehabilitation Program. The Agriculture Improvement Act of 2018 permanently authorized \$50 million in annual mandatory funding to be used for WFPO and the Watershed Rehabilitation Program. Within WFPO, the budget proposes \$160,000,000 for the Small Watershed Program, an increase of \$104.8 million. The other \$15,000,000 is for Flood Prevention Operations, which includes projects that were specifically authorized under the Flood Control Act of 1944, an increase of \$4.974 million. These increases will allow NRCS to address the increased cost of projects that are now ready for implementation. Additional funding is requested to address cost escalation in project implementation phases (both design and construction) for the highest priority projects that have completed the planning phase.

The budget proposes \$10,009,000, an increase of \$8 million from 2023, for the Watershed Rehabilitation Program. Dams installed through the Watershed Protection and Flood Prevention Act, Pilot Watershed Projects authorized by the Agriculture Appropriation Act of 1953, and the Resource Conservation and Development Program are eligible for rehabilitation assistance. There are currently 221 active watershed rehabilitation projects, and of these there are 161 dams in planning, 40 dams in design and 20 under construction. This funding will provide construction funds for two rehabilitation projects that will address critical public health and safety concerns with aging dams reaching the end of their design lives.

CONCLUSION

NRCS's Watershed and Flood Prevention Operations Program combines the agency's technical, scientific, and financial resources to have the greatest impact on our nation's resources. This program reflects our commitment to local leadership on critical conservation issues and targets the specific needs of communities across the country.

Protecting our Nation's small watersheds is essential to protecting lives, natural resources, and agriculture. As we work to respond to the climate crisis, maintenance and upkeep of these dams and related infrastructure is more important than ever in the face of extreme weather and natural disasters. We know that farmers, ranchers, foresters, and other landowners are on the frontlines of the climate crisis, and NRCS stands ready to support the implementation of conservation and infrastructure solutions that respond to the severity of the crisis. I appreciate Congress's continued support for NRCS and our work to ensure the safety and functionality of our small watersheds and voluntary conservation on working lands. Thank you for the opportunity to provide testimony.

Mr. ROUZER. Thank you much.
Dr. Bernstein.

**TESTIMONY OF AARON BERNSTEIN, M.D., M.P.H., DIRECTOR,
AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY,
CENTERS FOR DISEASE CONTROL AND PREVENTION**

Dr. BERNSTEIN. Chairman Rouzer, Ranking Member Napolitano, distinguished members of the subcommittee, thanks for the opportunity to be with you today to discuss the work of the Agency for Toxic Substances and Disease Registry. ATS—

Mr. ROUZER [interrupting]. Perhaps bring that microphone just a little closer to you.

Dr. BERNSTEIN. A little closer. OK. I will swallow it next.

ATSDR does work every day to protect the health of Americans from environmental exposures, whether chemicals that may be spilled in your communities or otherwise.

I am Dr. Aaron Bernstein, the Director of ATSDR and the National Center for Environmental Health at the CDC. I am a pediatrician, and I consider it a great honor to serve in this capacity.

Communities across this country routinely ask ATSDR to respond to their concerns about exposures and what they mean to their health, and especially the health of their children.

A prime example of this is the work that has been done in East Palestine. At the request of Pennsylvania, Ohio, and the U.S. EPA, ATSDR deployed a team of experts who engaged with State and local health departments, poison control centers and, of course, the affected communities.

We did extensive science, sampling data, geospatial modeling, other means to really dig into what those exposures meant to the health of the people affected in real-time. With the State health departments, our on-the-ground staff conducted a rapid assessment of potential health effects for first responders, in addition to the communities affected.

And we, of course, ensured that everything we did was shared directly with affected communities through regular meetings. And we ensured that the healthcare providers that were charged with the day-to-day care of these communities were well-informed through collaborations, both with the poison control centers and ATSDR-supported Pediatric Environmental Health Specialty Units, or PEHSUs.

ATSDR supports the PEHSU program which many of you will know about. I am proud to say that I served for many years in the region 1 PEHSU. These are regionally based centers with experts in pediatric environmental health.

I can attest firsthand to the crucial work that these centers do when disasters like this happen, because they are able to address the questions that inevitably arise and concerns about exposures, whether it is to lead, mold, PFAS, heat, wildfire smoke from parents, caregivers, and healthcare providers.

Beyond working directly with healthcare providers, ATSDR builds State environmental health capacity. ATSDR has funded 30 State health departments already to better their ability to detect, respond to, and prevent harmful exposures.

ATSDR funding allowed the Missouri Department of Health, for example, to form collaborations to test private wells for lead and the North Carolina Health Department to work with the Department of Defense on PFAS testing for residents near the Camp Greene Base.

A major priority for ATSDR, as I know it is for many of you, remains PFAS. In September 2022, ATSDR released the “Final PFAS Exposure Assessments Report” that was based on an assessment of 2,300 individuals in 10 communities across the country. We found that three PFAS blood levels were often higher in these communities than national averages and, perhaps more importantly, learned about how PFAS may be getting into people’s bodies in the first place.

Right now, ATSDR has embarked on a national, multisite health study to better understand what health effects having PFAS in our bodies—and we know that more than 90 percent of Americans do—what health effects they may have. Our hope is that we can learn

more about how to protect Americans from PFAS-associated health risks.

You should all know that ATSDR serves on the front line to protect the health of Americans from environmental exposures, and the need for ATSDR services has been growing.

For PFAS alone, ATSDR has worked with over 40 communities. And since June, ATSDR has responded to unprecedented wildfire smoke that affected millions of people in at least 10 States.

However, when accounting for inflation, ATSDR funding has decreased about 5 percent since 2020, and 35 percent over the last two decades. To put that in context of what that means, as Representative Larsen mentioned, about 15 percent of ATSDR's staff had to be deployed in response to East Palestine. If there were a second instance of the size of East Palestine simultaneously, ATSDR would have difficulty responding.

In the President's fiscal year 2024 budget, there is a \$1 million increase in funding which would go a long way to help ATSDR respond to the kinds of exposures that happened around events like East Palestine and others and, of course, to help ensure that when your constituents need us, we are there.

Thank you, again, for the opportunity to be here today to discuss the work of this agency.

[Dr. Bernstein's prepared statement follows:]

Prepared Statement of Aaron Bernstein, M.D., M.P.H., Director, Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention

Chairman Rouzer, Ranking Member Napolitano, and distinguished members of the Committee, I am Aaron Bernstein, the Director of the National Center for Environmental Health at the Centers for Disease Control and Prevention, and the Director of the Agency for Toxic Substances and Disease Registry (ATSDR). It is an honor to appear before you today to discuss how investments in ATSDR are protecting Americans' health, now and in the future.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

In 1980, Congress created ATSDR through the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) to implement the health-related sections of laws that protect the public from hazardous wastes and spills of hazardous substances. Congress authorized the agency to assess the presence and nature of health hazards at specific Superfund sites, prevent and reduce further exposure and the illnesses that result from such exposures, and expand the knowledge base about health effects from exposure to hazardous substances. Amendments to the Resource Conservation and Recovery Act of 1976 (RCRA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) broadened ATSDR's responsibilities and authorities in the areas of public health assessments, establishment and maintenance of toxicological databases, information dissemination, and medical education.

ATSDR accomplishes its mission by preparing for and responding to environmental health emergencies; supporting and building capacity at state, tribal, territorial, and local health departments; protecting children from the health effects of environmental exposures; and investigating environmental exposures to emerging contaminants of concern. Between FY 2021 and FY 2023, ATSDR responded to over 1,200 state, community, and federal requests to address the potential health risks to over 200,000 people around the country. During that period, ATSDR funded state health departments and conducted over 80 assessments to evaluate environmental exposures in communities. Much of this work takes place in the regional offices, where staff can respond quickly during emergencies.

Modest increases in funding in FY 2020 through FY 2023 have allowed ATSDR to provide enhancements in its support to state and local health departments and

expand its environmental health education efforts. The \$1 million in additional funding requested in the President's Budget would allow ATSDR to expand its partnership with communities to address their concerns, monitor and investigate hazardous exposures, build environmental health capacity, and respond to environmental health emergencies. These efforts align with CDC/ATSDR's Moving Forward Initiative to modernize efforts to respond to public health crises in all communities, including those that are underserved. Sustained investment in public health infrastructure and capacity will be essential to build strong, resilient communities and will bolster CDC/ATSDR's ability to respond to the next public health event, including any that result from environmental exposures.

PREPARING FOR AND RESPONDING TO ENVIRONMENTAL HEALTH EMERGENCIES

ATSDR Emergency Response Teams are available 24 hours a day and are composed of toxicologists, physicians, and other scientists available to assist during an emergency involving hazardous substances in the environment. These teams conduct assessments and provide technical support to health departments working to address environmental health emergencies.

ATSDR has staff located in 10 regional offices across the country, who are prepared to respond when natural hazards, chemical spills, and other environmental emergencies occur. Although most regional offices have a small staff, these offices are first on-the-ground, leveraging both the situational awareness they have developed over the years and the trust they have established with state, territorial, local, and tribal health departments, regulatory agencies, and community organizations to ensure responses meet the needs of communities.

During environmental health emergencies, ATSDR provides information to health care providers to help treat patients, communicates with the public about health risks, forms partnerships to address community needs, and delivers technical assistance, including reviews of environmental sampling data to assess for public health risks.

ATSDR has aided state, territorial, local, tribal, and federal partners during many environmental disasters over the last several years, including responses to the drinking water contamination incident at Joint Base Pearl Harbor-Hickam and the recent train derailment and resulting chemical spill in East Palestine, Ohio. In both cases, the affected state health departments requested that ATSDR conduct an Assessment of Chemical Exposure (ACE) investigation, a rapid epidemiological assessment used to evaluate the health impact of environmental exposures. ATSDR sent staff to East Palestine to assist with on-the-ground efforts to conduct the ACE investigation and provide other technical assistance, such as attending meetings to answer community questions. Information from the ACE investigations was used by the health departments to inform the next steps of the response and identify additional follow-up needs. ATSDR continues to assist the health departments on an as-needed basis to ensure the continued safety of those in the communities. However, approximately 15 percent of ATSDR's staff responded to the East Palestine incident, either remotely or in the field, causing disruptions to routine work. With current resources, ATSDR would have difficulty responding to two concurrent events of this magnitude.

ATSDR also maintains resources to help partners prepare for and address health risks. For example, CDC and ATSDR have a wildfire readiness webpage with information people can use to protect themselves¹ and a geospatial information portal² that compiles data from the U.S. Forest Service, National Oceanic and Atmospheric Administration, and others with ATSDR's health and social vulnerability data to allow users to quickly see where wildfires are occurring across the world, the direction and magnitude of the wind, and an interactive map that shows detailed data on current fire incidents, smoke forecasts, fire forecasts, air quality, population vulnerability, and more. ATSDR responded to the Canadian Wildfire Smoke event in June 2023 by building an interactive map in less than two hours with information to visualize air quality, smoke, and population information, as well as providing health messaging, surveillance of air quality and health effects, and coordination with federal, state, tribal, and territorial partners. ATSDR is currently leading CDC/ATSDR's efforts to update the agencies' response planning for wildfires and the public health consequences of wildfire smoke exposures. CDC and ATSDR are also working with other federal agencies, including the Department of the Interior, U.S. Department of Agriculture, and U.S. Environmental Protection Agency, to integrate

¹ <https://www.cdc.gov/disasters/wildfires/index.html>

² <https://onemap.cdc.gov/Portal/home/>

public health considerations into their wildfire activities through participation on multiple interagency workgroups, including the Wildland Fire Leadership Council.

SUPPORT TO HEALTH DEPARTMENTS

ATSDR's Partnership to Promote Localized Efforts to Reduce Environmental Exposure (APPLETREE) cooperative agreement program funds state health departments to detect, respond to, and prevent harmful exposures in communities. In FY 2020 through FY 2022, ATSDR awarded approximately \$35 million to 28 state health departments through APPLETREE over the three-year cycle of the competitive award. Funding increases in FY 2023 allowed ATSDR to expand APPLETREE to support two additional states, bringing the total to 30.

State health departments are on the front lines when it comes to responding to environmental exposures. ATSDR's cooperative agreement program builds capacity in states to assess health risks from potentially hazardous substances. Cooperative agreements have enabled greater ability for health departments to support clinicians who may have patients with specific concerns related to exposures, build bridges between health and environmental agencies, implement protections to harmful exposures, and rapidly respond to environmental emergencies.

APPLETREE allows health departments to form partnerships to address hazardous exposures comprehensively. For example, the Missouri Department of Health and Human Services collaborated with the U.S. Environmental Protection Agency, Missouri Department of Natural Resources, and local governments to address lead exposure concerns from contaminated drinking water. The partnerships led to the sampling of hundreds of private wells and a free community blood-lead testing event that helped people understand their risks and steps they can take to protect their and their family's health.

Many states, such as North Carolina and Washington, choose to use ATSDR support to enhance their actions addressing community concerns about emerging chemicals, including per- and polyfluoroalkyl substances (PFAS). APPLETREE also enables health departments to make resources available to the public, such as California's work to create a one-stop website with information on hazardous sites, environmental health screening, and mapping tools that residents can use to learn more about their environment and how it may affect their health.

Communities that are economically and socially marginalized continue to bear disproportionate impacts of environmental hazards and it remains a top priority for ATSDR to continue to engage these communities to address their concerns and understand how exposures impact health. ATSDR has created tools to help health departments and others address exposures in these communities, including updates to the Public Health Assessment Guidance Manual³ and a geospatial index⁴ that uses demographic and socioeconomic data, along with cumulative environmental exposures, to identify communities that experience a disproportionately high environmental burden in the United States.

PROTECTING CHILDREN'S HEALTH

Children are uniquely sensitive to exposures to chemical contaminants and environmental stress such as extreme heat or cold. Children's minds and bodies are still developing which can make them less able to effectively cope with exposures when they occur. In addition, exposures can disrupt normal development and result in harm later in life. ATSDR manages a national network of 10 Pediatric Environmental Health Specialty Units (PEHSUs), located in each federal region across the United States, to advise parents, child caregivers, and healthcare providers on protecting and caring for children potentially exposed to harmful chemicals. Regional PEHSU units respond to requests for information, offer advice on environmentally related health effects for pregnant women and children, and provide education to healthcare providers, other health professionals, and community members.

The PEHSU network has produced many tools to help clinicians, parents, and children understand environmental exposures. Most health professionals who care for children do not receive adequate training to recognize, manage, treat, and prevent environmental health risks to children and pregnant women. PEHSUs fill this critical gap every day and especially when communities are in crisis, whether that comes from newly discovered PFAS exposures in a community or in situations such as the East Palestine train derailment.

³ <https://www.atsdr.cdc.gov/pha-guidance/index.html>

⁴ <https://www.atsdr.cdc.gov/placeandhealth/eji/index.html>

ATSDR also protects children's health through the Choose Safe Places for Early Care and Education (CSPECE) program, which works to reduce exposure to dangerous chemicals in childcare facilities. Funded by ATSDR as part of APPLETREE, states screen potential childcare locations, educate childcare providers, and inform implementation of evidence-based protective measures to ensure children play, learn, and grow in healthy, safe places. In the last three years, CSPECE has enabled 260 local partnerships across various sectors, developed over 100 tools and resources to educate childcare providers, provided educational resources to over 55,000 childcare stakeholders, and screened over 9,000 childcare locations for potential hazards.

INVESTIGATING THE HEALTH IMPACTS OF PFAS AND EMERGING CONTAMINANTS

Work on emerging environmental contaminants continues to be a priority for ATSDR, with the agency conducting work to characterize human exposures and understand the health impacts of those exposures. For example, ATSDR is continuing its work on addressing exposures to per- and polyfluoroalkyl substances (PFAS), a class of thousands of human-made chemicals that have been used in industry and consumer products since the 1950s. Exposure to these chemicals is widespread. CDC's National Health and Nutrition Examination Survey (NHANES) has detected PFAS in the blood of more than 95% of the U.S. population⁵. More research is needed to determine the health effects in humans⁶, and some studies⁷ suggest exposure may affect cholesterol levels, affect the immune system, and increase the risk for some cancers.

ATSDR has worked to address community concerns about PFAS since 2009, with the development of the first health assessment that looked at PFAS exposure in Decatur, Alabama. To date, ATSDR has worked to investigate exposure to, and possible health effects associated with, PFAS in more than 40 communities across the United States.

The National Defense Authorization Act (NDAA) of 2018 directed ATSDR to complete exposure assessments and a health study to look at PFAS exposure in communities. With funds provided through the Department of Defense appropriation, ATSDR conducted exposure assessments in ten communities near current or former military bases across the U.S. that are known to have had PFAS in their drinking water. An exposure assessment provides information to communities about the levels of PFAS in their bodies. The exposure assessments looked at exposure in more than 2,300 individuals from over 1,200 households, providing information about factors that can affect exposure, such as age, sex, and use of certain consumer products. In September 2022, ATSDR released a final report on the findings of the exposure assessments across all 10 sites. This information can be used to develop interventions which might ultimately reduce PFAS exposures.

ATSDR is also using funds provided through the Defense appropriation to conduct a national multi-site health study that will look at the relationship between PFAS exposures through drinking water and health outcomes. The Pease Study in New Hampshire is serving as the first site in the multi-site health study. ATSDR has completed recruitment and sample analysis for the Pease Study and is in the process of developing reports to share findings from the study, expected to be released in FY 2024. In 2019, ATSDR awarded research cooperative agreements to seven recipients to work on the multi-site study in seven additional states. Two recipients have completed study recruitment and sample collection while the remaining expect to complete these steps by the end of FY 2023. This groundbreaking health study will provide information about the health effects of PFAS exposure that can be used in all communities to protect health.

ATSDR is also taking steps to ensure that clinicians have the guidance they need to address patient concerns about PFAS exposure. ATSDR is working closely with the Pediatric Environmental Health Specialty Units to offer pediatricians and other healthcare professionals information about PFAS so they can best serve their patients in these communities. ATSDR supported the National Academies of Science, Engineering, and Medicine to review the scientific information on PFAS to develop recommendations to inform updates to ATSDR's PFAS Guidance for Clinicians. ATSDR expects to update the guidance by the end of 2023.

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072821/>

⁶ <https://www.whitehouse.gov/wp-content/uploads/2023/03/OSTP-March-2023-PFAS-Report.pdf>

⁷ <https://www.atsdr.cdc.gov/ToxProfiles/tp200.pdf>

In 2022, CDC and ATSDR released the *Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns*⁸ to help health departments as they investigate patterns of disease in communities, another emerging environmental health issue. This document updated the 2013 guidance for investigating cancer clusters to include additional patterns of cancer that may warrant further assessment, approaches to better engage communities, standardized templates to document the nature and extent of cancer concerns, and updated approaches to identify and investigate unusual patterns of cancer, including suggestions for routine surveillance activities.

ATSDR is also investigating the potential health impacts of microplastics, which are pervasive in the environment and are small enough to be internalized and transported within the human body. Exposure-dose and health effects have not been established, but some research in animals has indicated that microplastic exposure may carry significant health consequences. Studies to understand health effects of microplastics in humans still need standardized methods for identifying and measuring plastic particles. ATSDR, along with CDC's National Center for Environmental Health, is working on developing the science to define and prioritize potential health risks and develop initiatives to better characterize and understand whether microplastic exposures are harmful to human health.

FY 2024 BUDGET REQUEST FOR ATSDR

In FY 2024, ATSDR's budget request will allow ATSDR to respond to requests from communities, states, and other jurisdictions to investigate environmental exposures and provide information that can help them protect themselves and their families from chemical exposures. This includes preparing for and responding to environmental health emergencies. ATSDR will also continue to provide resources to state, territorial, local, and tribal health departments to build national public health capacity and develop tools to support that work.

ATSDR has used the annual ATSDR appropriations increases over the last four years and COVID supplemental funding to provide additional funding to states to build their environmental health capacity and to provide additional support to PEHSUs.

CONCLUSION

ATSDR serves on the frontline to protect the health of Americans when environmental risks appear. It has a unique mission and responsibility to advance health through studies, support of health departments, development of clinician guidance, and response to environmental health emergencies, all in partnership with affected communities. In FY 2024, the agency will continue working toward our goals of providing science-based guidance that can protect people from health risks that may come with environmental exposures. Thank you again for the opportunity to be here today to discuss the important work of the agency.

Mr. ROUZER. Thank you, sir.
Ms. LeBoeuf.

TESTIMONY OF NICOLE R. LEBOEUF, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Ms. LEBOEUF. Chairman Rouzer, Ranking Member Napolitano, and members of the subcommittee, thank you for the opportunity to testify today.

I am Nicole LeBoeuf, NOAA's Assistant Administrator for Ocean Services and Coastal Zone Management.

My statement will offer highlights of NOAA's fiscal year 2024 proposed budget, illustrating the increasing value of investing in NOAA as we work toward building a climate-ready Nation.

NOAA's ability to understand and predict changes to our planet provides a critical foundation for smart decisionmaking in the face

⁸ <https://www.cdc.gov/nceh/cancer-environment/pdfs/Guidelines-for-Examining-Unusual-Patterns-of-Cancer-and-Environmental-Concerns-h.pdf>

of climate change. While we don't know exactly what the future holds, there is no question that it will be different from the world in which we live today.

The good news is that it is NOAA's mission to understand and predict changes to our Earth's systems and to share this important information with the public in ways that make science actionable in our daily lives. NOAA also serves as steward of our marine resources and ecosystems, conserving them for future generations.

NOAA is uniquely qualified to prepare our Nation for climate change, and America is in need of NOAA's authoritative data, products, tools, and services now more than ever.

The Bipartisan Infrastructure Law and the Inflation Reduction Act provided much needed investments in NOAA's efforts related to coastal resilience, climate data and services, marine debris, fisheries, and protected resources.

In fiscal year 2024, NOAA will build on these historic investments and strengthen our efforts to build our country's resilience in a changing world.

In the United States, approximately 40 percent of the population lives at direct risk from coastal- and ocean-related impacts of climate change such as intensified and longer lasting hurricanes, coastal inundation, and other hazards exacerbated by sea-level rise.

NOAA requests \$6.8 billion in fiscal year 2024, an increase of \$450.5 million above fiscal year 2023 enacted levels, to meet the growing demand for our climate information, facilitate the development of new products and services, and ensure equitable access to these critical resources.

NOAA is requesting an additional \$78.2 million to expand NOAA's climate products and services with the goal of increasing our understanding of the climate, enhancing our ability to predict environmental disasters and extreme events, and improving our understanding of the impacts of climate change on fisheries and marine ecosystems.

NOAA's request prioritizes actionable environmental information as the basis for smart decisionmaking so that communities across the Nation can plan ahead for the kinds of events already impacting them every day, such as wildfires, floods, and extreme heat, and help them prepare for the changes to come.

NOAA also requests an additional \$81.4 million in fiscal year 2024 in support of offshore wind energy, the National Seafood Strategy, foundational mapping and charting efforts, as well as key ocean, weather, and space observations infrastructure.

These investments will support the U.S. blue economy and a climate-ready Nation, by making our Nation's infrastructure more resilient, advancing U.S. leadership in research and development of critical technologies, and improving fisheries management in ways that prepare this important industry for the future.

In addition, NOAA's fiscal year 2024 request includes an additional \$359.2 million to support NOAA's observational infrastructure in its next-generation satellite systems, ensuring expanded delivery of these essential observations, as well.

These requests will improve NOAA's IT infrastructure, ensuring that data collected are both preserved for the future and easily accessible by all.

Finally, safe and functional facilities are critical to NOAA's success and to our ability to carry out our mission of science, service, and stewardship. NOAA is requesting an increase of \$55.7 million to support maintenance and repair of our aging infrastructure and facilities across the Nation and across our programs.

In summary, NOAA's fiscal year 2024 budget request identifies priority investments to ensure that NOAA's delivery of ocean and atmospheric science, products, and services to the Nation are delivered.

We welcome the opportunity to work with you to meet our country's growing needs for environmental intelligence, essential to keeping us prosperous and resilient under changing conditions.

Thank you, and I look forward to your questions.

[Ms. LeBoeuf's prepared statement follows:]

**Prepared Statement of Nicole R. LeBoeuf, Assistant Administrator,
National Ocean Service, National Oceanic and Atmospheric Administration**

Chairman Rouzer, Ranking Member Napolitano, and Members of the Subcommittee, thank you for the opportunity to testify today regarding the President's Fiscal Year 2024 Budget. The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) appreciates the continued support of Congress, the Administration, and our broad and diverse base of stakeholders.

For Fiscal Year (FY) 2024, NOAA proposes a budget of \$6.8 billion in discretionary appropriations, an increase of \$450.5 million from the FY 2023 Enacted. The FY 2024 budget builds on investments on the Inflation Reduction Act (IRA) (P.L. 117-169) and Bipartisan Infrastructure Law (BIL) (P.L. 117-58) for Climate-Ready Coasts, climate data and services, and fisheries and protected resources.

The FY 2024 request builds on BIL and IRA investments and supports the following NOAA goals:

- *Expanding NOAA's Climate Products and Services*—As part of a whole of government approach, NOAA will provide actionable environmental information that is the basis of smart policy and decision-making, especially around initial risk and focus areas including wildfires, floods, drought, extreme heat, coasts, marine resources, and mitigation.
- *Providing Science and Data to Inform Economic Development*—NOAA will continue to foster environmental stewardship and optimize advances in science and technology to create value-added, data-driven sustainable and equitable economic development, with a particular focus on the New Blue Economy.
- *Equity and Workforce*—NOAA will continue to integrate equity across the organization by improving capabilities and knowledge sharing, and honing product development and service delivery in Tribal and underserved communities.
- *Satellites*—NOAA will continue investments in future geostationary, low Earth orbit, and space weather observations to ensure continuity of critical data from legacy systems, while providing significant improvements in data and products.
- *Facilities*—NOAA will continue investments aligned with the NOAA Facilities Strategic Plan and Facilities Investment Plan.

EXPANDING NOAA'S CLIMATE PRODUCTS AND SERVICES

NOAA provides actionable environmental information that is the basis for smart policy and decision-making in a changing world. NOAA is collaborating with other Federal agencies as part of the whole-of-government effort to address the climate crisis, strengthen resilience and promote economic growth. Together with its partners, NOAA will build a climate-ready nation whose prosperity, health, security, and continued growth benefit from and depend upon a shared understanding of—and collective action to reduce—the impacts of climate change.

The FY 2024 budget builds on investments in the BIL and IRA to pave the way for NOAA's support for a climate-ready nation. *In FY 2024, NOAA requests an additional \$78.2 million to implement Executive Order (EO) 14008 on Tackling the Climate Crisis at Home and Abroad.* Funding will support an earth system approach to enhance NOAA's critical contributions to the U.S. climate modeling enterprise, prediction and projection, research and development, observational infrastructure,

and service delivery and decision support tools. Establishing an end-to-end value chain for climate and weather data and services starts with investing in observational infrastructure and culminates in delivering comprehensive services to meet a diverse set of missions.

NOAA's weather and climate predictions and information must be reliably delivered to users to inform decision making. Forty percent of the U.S. population lives and works in coastal counties,¹ making a disproportionate segment of our society and economy at increasing risk to hazards such as hurricanes and coastal inundation. Therefore, the FY 2024 request will maintain investments to optimize the National Weather Service (NWS) Integrated Dissemination Program to ensure the provision of weather and climate predictions, forecasts, and warnings to the public, emergency management partners, and the U.S. weather enterprise. Funding will also allow first responders to immediately access imagery to assess and prioritize response efforts, improving positioning and processing, and delivering high resolution GIS ready imagery in real-time.

In coordination with other Federal climate service partners, NOAA will expand the proven capabilities of the Climate Adaptation Partnerships program and complement this work with NOAA's Regional Climate Services in order to advance adaptation measures and resilience planning at regional and local scales, while also prioritizing environmental justice. These partnerships will increase the value of climate information to users and support more efficient, cost-effective delivery of products and services relevant to region-specific economic activity, hazards, and vulnerability.

NOAA provides timely and actionable environmental observations on global, national, and regional scales from satellites, radar, surface systems, atmospheric greenhouse gas sampling stations, ocean buoys, uncrewed systems, aircraft, and ships. With the funding requested in FY 2024, in addition to the funding provided through the IRA, NOAA will continue the acquisition of a second G-550 for its high-altitude jet program. NOAA will invest in Days at Sea and Flight Hours to support critical mission requirements, and the NOAA Corps officers needed to safely and effectively operate new ships and aircraft. In addition, uncrewed platforms have great potential to increase data collection efficiency and fill gaps not met by traditional platforms. NOAA will continue to explore using Uncrewed Systems to support the full spectrum of NOAA's aircraft and maritime missions.

NOAA will collaborate with our academic research partners to improve precipitation predictions across multiple weather and climate timescales through the Precipitation Prediction Grand Challenge Initiative. This effort will lead to improved precipitation forecasts using NOAA's Unified Forecast System. In addition, NOAA will develop a state-of-the-art global reanalysis capability to improve the prediction of high impact weather events, coastal inundation risk, and infrastructure failure, which will in turn improve our understanding of trends in extreme events, climate impacts on marine ecosystems and fisheries, and environmental change in under-observed polar regions.

As we increase our understanding of the changing climate in the short and long-terms, we will simultaneously research and develop new and improved tools for decision makers to address climate impacts. For example, NOAA will support scientific monitoring and prediction of Arctic systems, development of innovative observational technologies, and ensure that satellite-derived data is provided to users as actionable information in support of high-priority applications in polar regions and coastal zones. NOAA will also address the ongoing needs identified by the NOAA-Alaska Tribal Health Consortium to further develop its Tribal climate program, and increase support in service to Alaska Natives. In addition, NOAA's research will address challenges faced by commercial fishing and marine resource managers and support tourism and recreation. The NOAA Climate-Ready Fisheries Initiative will provide decision-makers with climate-informed advice on best management strategies to reduce impacts and increase ecosystem and economic resilience.

NOAA will also invest in increasing conservation and protection in an expanded sanctuary system, which is an integral part of NOAA's implementation of the *America the Beautiful* initiative that includes the goal to conserve at least 30 percent of U.S. lands and waters by 2030.

NOAA's FY 2024 request will enhance NOAA's sanctuary management capacity as new sanctuaries are designated. NOAA will work to identify gaps in marine protection, train the next generation of Marine Protected Area professionals, and expand technology use in sanctuaries to support management priorities.

¹NOAA Office of Coastal Management and U.S. Census Bureau, American Community Survey Five-Year Estimates (2015–2019), <https://coast.noaa.gov/digitalcoast/data/acs.html> (accessed March 1, 2023)

PROVIDING SCIENCE AND DATA TO INFORM ECONOMIC DEVELOPMENT

NOAA will continue to foster environmental stewardship and optimize advances in science and technology to create value-added, data-driven sustainable economic development, with a particular focus on the New Blue Economy: supporting development framed around an information and knowledge-based approach to support fisheries, transportation, shipping, renewable energy, recreation, and livelihoods. In 2022, the Bureau of Economic Analysis, in partnership with NOAA, released the official Marine Economy statistics, finding that the U.S. marine economy contributed approximately \$361.4 billion to the Nation's gross domestic products² and supported 2.2 million jobs in 2020.³ *In FY 2024, NOAA requests an additional \$81.4 million in support of the expansion of offshore wind energy, the National Seafood Strategy, ocean and coastal mapping and charting, and development of key information systems in our tsunami, weather, and space observations infrastructure.*

In support of the Administration's goal to deploy 30 gigawatts of offshore energy by 2030, NOAA will facilitate smart economic and ecological offshore wind development. In FY 2024, NOAA will continue to work closely with the Department of the Interior's Bureau of Ocean Energy Management (BOEM) to minimize the effects of offshore energy projects on protected marine resources, fisheries, and important habitats; reduce delays and minimize adverse economic impacts to the fishing industry and related coastal communities; and mitigate impacts to fisheries surveys in the Northeast and Mid-Atlantic.

NOAA's National Seafood Strategy outlines actions to rebuild and enhance the competitiveness of the seafood and fishing industries and associated communities. NOAA will support the Strategy by combating Illegal, Unreported, and Unregulated (IUU) fishing through increased capacity for existing programs. NOAA will use advanced technology, improve global fisheries management through international negotiations and capacity building, monitor U.S. imports to promote legal and sustainable seafood, and increase enforcement capacity and marine forensics.

In FY 2024, NOAA will fill data gaps in the foundational data for ocean and coastal mapping and charting of the U.S. Exclusive Economic Zone, and build out geospatial and water level infrastructure in coastal areas benefiting local communities and Tribal populations. Also, to further address tsunamis' unpredictability and potentially disastrous consequences to life and property along vulnerable U.S. coastlines, NOAA will provide a common framework that supports the National Tsunami Warning Center, located in Alaska, and Pacific Tsunami Warning Center, located in Hawai'i. Funding will ensure continuity of operations by eliminating discontinuities within existing systems, and providing consistent guidance to all users, independent of location.

With the FY 2024 Budget request, NOAA will complete acquisition of a demonstration model to advance critical research and support industry engagement to evaluate a dual polarization Phased Array Radar (PAR) technology to meet NOAA's weather radar requirements. PAR is a promising technology that could replace NOAA's current NEXRAD radar network by 2040. Additional funding will support improvement in the safety of commercial space activities as Earth's orbits become increasingly congested with space traffic and debris. This request will allow the Office of Space Commerce to continue progress toward meeting its target of achieving Full Operating Capability in FY 2025 for space situational awareness services.

EQUITY AND WORKFORCE

As NOAA tackles the climate crisis by building a climate-ready nation, it will strive to engage and support the Nation's underserved and vulnerable communities. The Administration's policies, including those described in EO 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, and EO 14096 on *Revitalizing Our Nation's Commitment to Environmental Justice for All*, direct agencies to integrate equity into the DNA of their organizations—from management, to policies, to service delivery. To meet this challenge, NOAA is making equity central to every facet of mission delivery and working internally to create a model agency that incorporates diverse perspectives into our decision-making. *In FY 2024, NOAA requests an additional \$9.1 million to invest in science and management efforts in the U.S. Pacific and Caribbean territories, and*

²Bureau of Economic Analysis and NOAA, *Ocean Economy*, <https://www.bea.gov/news/2022/marine-economy-satellite-account-2014-2020> (accessed March 1, 2023)

³Bureau of Economic Analysis and NOAA, *Ocean Economy*, <https://www.noaa.gov/news-release/marine-economy-continues-to-power-american-prosperity-despite-2020-downturn> (accessed March 1, 2023)

support fisheries management and the seafood sector through training and workforce development.

NOAA will expand the use of social, economic, and climate change metrics that uniquely characterize a coastal community's vulnerability and resilience to disturbances (e.g., harvest declines, extreme weather, oil spills, sea level rise, etc.). This will enable users to analyze the climate vulnerability of over 4,600 coastal communities in 23 states thereby supporting the implementation of policies that address environmental, climate, and racial equity and justice considerations.

NOAA will support a diverse domestic seafood sector through a series of workforce development and training programs. Partnerships will span a wide range of entities, including diverse and historically underserved communities such as: minority serving institutions (MSIs), Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), and community colleges. Training will focus on adaptation to disruptions in the market and the regulations and science that underpin management, which will help improve cooperation and trust among the industry, public, scientists, and regulators.

SATELLITES

NOAA satellites are critical for NOAA's mission, as well as the security, safety, and prosperity of the Nation. Data from these satellites provide essential support to all segments of the U.S. economy. *In FY 2024, NOAA requests an additional \$365.8 million for significant investments in NOAA's observational infrastructure, underscoring NOAA's commitment to making crucial, time-sensitive, and cost-effective investments to ensure that the Nation's next-generation satellite systems expand service delivery of essential earth system observations to meet the evolving needs of the American public.* The FY 2024 budget will help NOAA better observe environmental phenomena connected to climate change-related impacts and patterns, and deliver products, information, and climate services to inform decision makers.

The value of NOAA's world-class data is enhanced by NOAA applications and access by users. The FY 2024 budget supports much-needed improvements to NOAA's data infrastructure that will ensure that the data collected are preserved for the future and can be easily accessed in a cloud-based environment. This includes funding to transition NOAA to cloud computing for data ingest, processing, dissemination, and archiving, which will expand the size and diversity of NOAA user communities and data applications. In addition, NOAA will continue to implement vulnerability management against the latest threats on satellite ground systems to lower the operational risk, which ensures continuity of critical satellite data flow to key customers such as NOAA's NWS.

NOAA's current constellation has proven its worth and will continue to do so for another decade. However, NOAA must concurrently invest in the next generation of environmental satellites with the needs of all of our communities in mind. FY 2024 funding for future geostationary, low earth orbit, and space weather observations will ensure critical data continuity from legacy systems, while providing significant improvements in data and products to meet the complex societal and environmental needs of the Nation. NOAA's program investments also allow us to immediately capitalize on the National Aeronautics and Space Administration (NASA)'s satellite observations for NOAA requirements and mission focus.

FACILITIES

NOAA's facilities portfolio is vast with over 620 facilities, including over 400 owned properties, and an estimated replacement value which exceeds \$3 billion. *In FY 2024, NOAA requests an additional \$55.7 million to support maintenance and repair of its aging infrastructure and significantly improve facilities across the nation.* Each facility requires financial investments for maintenance, repairs, modernization, and even replacement to effectively sustain and evolve NOAA's science capabilities to support the current and future missions. NOAA proposes to significantly invest in facilities with an influx of funding to accompany the strategic priorities identified in the upcoming Facilities Strategic Plan.

SUMMARY

NOAA is working hand-in-hand with partners locally and sharing best practices globally. People know they can turn to NOAA for reliable climate and extreme weather information to help make informed decisions that help save lives and livelihoods. With increased funding in FY 2024, NOAA will ensure continuity from legacy systems while providing significant improvements in data and products and continue investments aligned with our strategic vision. In doing so, it ensures that

NOAA will continue to deploy the full breadth of its integrated services and capabilities necessary to ensure a climate-ready nation.

Mr. ROUZER. Well, thank each of you for your testimony.

Before I get into the question-and-answer period, I have a couple of items for the record, a little housekeeping, so to speak.

I ask unanimous consent to enter into the record letters sent by the National Association of Home Builders, dated June 28, 2023; the National Stone, Sand, and Gravel Association dated July 7; the National Mining Association dated July 11; and the Waters Advocacy Coalition dated July 13, all addressed to EPA Administrator Michael Regan and Assistant Secretary of the Army for Civil Works Michael Connor, urging the Biden administration to end the pause on jurisdictional determinations and quickly comply with the Supreme Court's *Sackett* decision.

Without objection, so ordered.

[The information follows:]

Letter of June 28, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Alicia G. Huey, Chairman of the Board, National Association of Home Builders of the United States, Submitted for the Record by Hon. David Rouzer

JUNE 28, 2023.

The Honorable MICHAEL S. REGAN,
Administrator,
Office of Administrator, Mail Code 1101A, Environmental Protection Agency, 1200
Pennsylvania Avenue, NW, Washington, DC 20460.

The Honorable MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works,
U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 20310.

DEAR ADMINISTRATOR REGAN AND ASSISTANT SECRETARY CONNOR:

On behalf of the National Association of Home Builders of the United States (NAHB) and its more than 140,000 members, I write to urge you to quickly propose and finalize a revised regulation and immediately provide the Corps districts with regulatory guidance that clarifies the limits of federal jurisdictional under the Clean Water Act (CWA) consistent with the U.S. Supreme Court's holdings in *Sackett v. Environmental Protection Agency*. Since the *Sackett* decision was announced on May 25, 2023, the Corps has stopped processing requests for approved jurisdictional determinations (AJDs) while the districts await guidance from Corps' Headquarters on how to proceed. Halting AJDs leads to permitting delays and places another barrier on the nation's home builders' ability to provide safe, decent, and affordable housing.

Over a month has passed since the Court's opinion. With no post-*Sackett* interpretive guidance, home builders and developers face three untenable options. First, they may attempt to determine whether their activities require a CWA §404 wetlands permit and risk subsequent CWA enforcement action if they interpret *Sackett* differently than the federal regulators. Second, property owners may accept a preliminary jurisdictional determination (PJD), allowing federal regulators to assume that the wetlands or water features on or near the property are jurisdictional. In this scenario, only after our members relinquish the right to have the Corps make an official determination of jurisdiction of aquatic resources for any CWA jurisdictional features on their property will the Corps district offices agree to process requested CWA §404 permits. And third, they can do nothing and wait until the agencies figure how to address *Sackett*. These options are extremely frustrating and costly to the U.S. homebuilding industry, and none is appropriate or acceptable.

Last week, Assistant Secretary Connor testified before the House Committee on Transportation and Infrastructure's Subcommittee on Water Resources and Environment and stated that the agencies do not intend to lift the nationwide suspension on AJDs or provide the districts with interim *Sackett* regulatory guidance until

a final rule is enforced. On June 27, 2023, the agencies announced they intend to file amendments to the 2023 “Revised Definition of ‘Waters of the United States’ Rule” (2023 Rule) and issue a final rule by September 1, 2023.¹ Land acquisition, permit processing, and home building cannot be paused until September 1; we desperately need interim guidance from the agencies *now*.

A healthy housing market is critical to a strong and vibrant U.S. economy and is contingent upon EPA and the Corps moving forward quickly and affirmatively to clarify the scope of federal CWA jurisdiction and restart the Section 404 approval processes. *Sackett* established clear, bright lines concerning which aquatic features are not jurisdictional under the CWA. In short, the agencies cannot rely on the “significant nexus test,” cannot regulate wetlands that do not directly touch (i.e., appear indistinguishable from) a water of the United States, and cannot claim as jurisdictional any waters of the United States that are not relatively permanent bodies of water connected to traditional interstate navigable waters. While the agencies continue to apply two different WOTUS regulatory definitions, with less than half the states following the 2023 Rule and a majority adhering to the “pre-2015 regulatory regime”, regardless of which regulatory definition of WOTUS is being followed, *Sackett* has invalidated key aspects.

NAHB supports the agencies’ plan to promulgate a new WOTUS regulatory definition consistent with *Sackett*. Nevertheless, there is an immediate need for interim regulatory guidance that will allow the Corps to lift the nationwide suspension of issuing AJDs and provide affected landowners, including homebuilders, certainty over whether their lands may be subject to CWA jurisdiction.

I appreciate your prompt attention to this critically important matter for the U.S. home building industry. Should you have any questions, please do not hesitate to contact Mr. Michael Mittelholzer, Assistant Vice President, Environmental Policy. NAHB looks forward to working collaboratively with you as the agencies craft a durable and workable regulatory definition of WOTUS that is consistent with the recent *Sackett* opinion.

Best regards,

ALICIA G. HUEY,
Chairman of the Board,
National Association of Home Builders of the United States.

cc: Ms. Radhika Fox, Assistant Administrator, Office of Water, U.S. EPA
Mr. Jaime A. Pinkham, Principal Deputy Assistant Secretary of the Army for Civil Works, U.S. Army Corps of Engineers

Letter of July 7, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Emily W. Coyner, P.G., Senior Director, Environmental Policy, National Stone, Sand & Gravel Association, Submitted for the Record by Hon. David Rouzer

JULY 7, 2023.

The Honorable MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works,
U.S. Army Corps of Engineers, 108 Army Pentagon.

The Honorable MICHAEL S. REGAN,
Administrator,
Environmental Protection Agency, 1200 Pennsylvania Avenue NW.

Re: Post-Sackett Pause on AJDs and materials needed for IIJA implementation

DEAR ASSISTANT SECRETARY CONNOR AND ADMINISTRATOR REGAN:

The National Stone, Sand & Gravel Association (NSSGA) strongly urges the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (the agencies) to immediately issue a public, post-Sackett memo on approved jurisdictional determinations (AJDs) for areas that are clearly excluded from jurisdiction under the *Sackett v. EPA* (Sackett) opinion. While we agree that an updated rule is needed for more complex aspects of the Supreme Court of the U.S. (SCOTUS) opinion, interim directives are urgently needed to issue AJDs for features that were clearly excluded under Sackett, namely isolated waters, ephemeral waters, intermit-

¹ <https://www.epa.gov/wotus/amendments-2023-rule>

tent waters that lack relatively permanent flow and wetlands not connected to tributaries or navigable waters.

It has been over a month since the release of Sackett, and our members cannot wait another two months or more while they are seeking to supply construction materials to infrastructure projects. The dynamic nature of our industry means that time is of the essence, and delays hinder our ability to contribute to the administration's infrastructure goals by providing the high-quality materials needed for nearly every project. Over the past two years our industry has been operating under one rule nullified, then the pre-2015, then another rule in place for a short time then nullified in half of the country. The current AJD ban only adds to existing confusion and obstacles our industry faces as we work to fulfill the administration's infrastructure goals by providing high quality materials needed for nearly every project.

NSSGA represents the stone, sand, and gravel (known as aggregates) needed for infrastructure and environmental improvements such as the purification of water and flood control from over 9,000 operations across the U.S. The industry employs over 100,000 people in high-paying jobs to source 2.6 billion tons of aggregates each year that are used to sustain our modern way of life and build our nation's communities and infrastructure. Regulatory compliance delays and costs impact the availability of materials needed for infrastructure. NSSGA helped deliver the Infrastructure Investment and Jobs Act (IIJA) and strongly supports every federal effort to improve infrastructure, promote energy development and build more resilient communities. The lack of transparency and consideration from the agencies impairs timely permits which our members require to supply vital materials needed to advance our shared infrastructure goals.

At a time when the SCOTUS has made it abundantly clear that many features are now non-jurisdictional and admonished the agencies for lack of clarity with prior rules, we find it concerning that the Corps has halted the only tool that allows the regulated community to have certainty regarding their jurisdictional status. This is especially troubling for our members who risk severe penalties for violation of the CWA. After an unprecedented move of disallowing previously issued JDs under the 2020 WOTUS rule and requiring an additional analysis under the pre-2015 rule and/or the 2022 Rule, some of our members are having to now navigate the post-Sackett landscape blindly. Simplifying the process with a short interim directive or memo that identifies features not subject to jurisdiction and eligible for AJDs as well as preliminary JDs (PJDs), will provide needed certainty.

As per the Corps website: "The only USACE process for determining that an aquatic resource is NOT jurisdictional is an AJD." During the busiest season for most industries including ours, the Corps has removed the only avenue for landowners to be certain that their features are not subject to the CWA.

Instead, our members face a frustrating array of unacceptable choices that are not within the legal framework under Sackett. They are forced to accept a preliminary jurisdictional determination (PJD), which would make many now non-jurisdictional features jurisdictional, requiring costly and time-consuming mitigation and other requirements, or determine that features are non-jurisdictional and face greater risks, or wait even longer, exacerbating the confusion we have experienced in recent years. SCOTUS unanimously noted the need for clarity, and this delay in any type of direction from the agencies is in direct opposition to this.

Adding to the frustration is the complete lack of transparency. Since Sackett, our members have received inconsistent and conflicting information from the Corps. This seems to stem from an apparent hold on all AJDs from headquarters. It was not until the June 22 hearing before the Senate Committee on Environmental & Public Works where Assistant Secretary Conner publicly acknowledged the headquarters decision placed this hold on AJDs pending rulemaking. This lack of communication and uncertainty is exactly what SCOTUS admonished the agencies for.

Direction from the Corps to immediately issue AJDs for clearly excluded waters is needed to fulfill the infrastructure goals of this administration. Doing so will help avoid supply chain issues, keeping material prices low and reducing inflation, which is essential for the general economic health of the country. Issuing a clear directive that outlines what waters are excluded and ensuring both AJDs and PJDs are issued per Sackett would demonstrate to the regulated community that we can collaborate collectively to achieve the best outcomes. This would provide a limited degree of certainty rather than the nebulous void of uncertainty caused by the lack of communication, saving valuable time and resources for stakeholders and the Corp staff. By holding up this process, a huge backlog is being created so it's likely our members will have to face even more delays once the new rule is released.

The June 21 bicameral letter from Transportation and Infrastructure Committee Chairman Sam Graves (R-MO), Senate Environment and Public Works Committee Ranking Member Shelley Moore Capito (R-WV), Water Resources and Environment

Subcommittee Chairman David Rouzer (R–NC), and Senate Fisheries, Wildlife, and Water Subcommittee Ranking Member Cynthia Lummis (R–WY) notes: “In implementing the Court’s decision, the Agencies must adhere to the majority opinion and not slow-walk compliance with the decision. The Agencies wasted valuable time and resources by prioritizing the promulgation of a rule over the first two years of the Biden Administration; that is now clearly unlawful. Notably, this Administration ignored our repeated admonitions that the Agencies should wait until the Supreme Court acted to proceed, and our warnings that the rule being drafted would not be “durable.” Now the EPA and the Corps must work to bring application of WOTUS quickly and effectively in line with *Sackett II*.”

Summer is a critical time for our industry to accomplish the infrastructure goals of the nation, particularly in the northern part of the US. We cannot wait additional months on end for a rule. We urge the agencies to issue a clear public directive of what waters are clearly not jurisdictional, and begin issuing AJDs as well as clearly excluding non-jurisdictional areas from PJDs, so that we can all get back to work.

Thank you for your consideration of these comments.

Sincerely,

EMILY W. COYNER, P.G.,
Senior Director, Environmental Policy,
National Stone, Sand & Gravel Association.

Letter of July 11, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Caitlin McHale, Associate General Counsel, National Mining Association, Submitted for the Record by Hon. David Rouzer

JULY 11, 2023.

The Honorable MICHAEL S. REGAN,
Administrator,

U.S. Environmental Protection Agency, Office of the Administrator, Mail Code 1101A, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

The Honorable MICHAEL L. CONNOR,

Assistant Secretary of the Army for Civil Works,
U.S. Department of the Army, 108 Army Pentagon, Washington, DC 20310.

DEAR ADMINISTRATOR REGAN AND ASSISTANT SECRETARY CONNOR:

On behalf of the National Mining Association’s (NMA) nearly 300 members and the more than 1.2 million Americans employed directly and indirectly by the U.S. mining industry,¹ we urge you to promptly lift the nationwide moratorium on issuing approved jurisdictional determinations (AJDs). Mining operations rely on the U.S. Army Corps of Engineers (Corps) to issue AJDs so they can plan their operations with certainty. The Corps’ halt on issuing AJDs is causing significant uncertainty for the mining industry and could put our members’ projects—and the critical national supply chains² that rely on the raw materials they produce—at risk.

In May, the U.S. Supreme Court in *Sackett v. EPA*³ unanimously struck down the “significant nexus” test the agencies have used to establish federal jurisdiction over certain water features and narrowed the scope of federal jurisdiction over other water features, including non-adjacent wetlands, isolated features, and features that

¹NMA, 2023 Mining Facts, at 4–6, available at <https://nma.org/wp-content/uploads/2022/04/FINAL-NMA-Mining-Facts-2023.pdf> (last accessed July 11, 2023).

²See *id.* at 7–8 (highlighting major mined products in each state). See also The White House, Fact Sheet: Securing a Made in America Supply Chain for Critical Minerals (Feb. 22, 2023) (“Critical minerals provide the building blocks for many modern technologies and are essential to our national security and economic prosperity.”); (“... our overreliance on foreign sources and adversarial nations for critical minerals and materials posed national and economic security threats.”), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/22/fact-sheet-securing-a-made-in-america-supply-chain-for-critical-minerals/> (last visited July 11, 2023). See also The White House, Report: Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth (June 2021), (“The United States and other nations are dependent on a range of critical minerals and materials that are the building blocks of the products we use every day. Rare earths metals are essential to manufacturing everything from engines to airplanes to defense equipment.”), available at <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf> (last visited July 11, 2023).

³*Sackett v. EPA*, 143 S. Ct. 1322 (2023).

are ordinarily dry. But instead of implementing the clear parameters the Court laid out in *Sackett*, the U.S. Environmental Protection Agency (EPA) and the Corps have refused to implement the decision, leaving important development projects in regulatory limbo.

Last month, Assistant Secretary Connor testified before Congress that the Corps had halted the issuance of AJDs and “would not be back in the AJD business” until the agencies completed a new “waters of the United States” (WOTUS) rule.⁴ The agencies recently stated they intend to issue a new final WOTUS rule by September 1, 2023,⁵ but there is nothing binding the agencies to that timeline. Nor have the agencies shared any direction with the regulated public as to how they should proceed with ongoing projects that rely on obtaining AJDs or other permitting decisions from the Corps.

Even if the agencies do complete a final rule by September 1, 2023, and resume issuance of AJDs at that time, the months-long backlog will make it impossible for our members to obtain an AJD or permitting decisions in a timely manner. By the time they do obtain an AJD, their projects could be a year or more behind schedule. The agencies have put our members and the broader business community in an untenable position: move forward with construction and risk significant civil and criminal penalties; stop work for months, if not longer, until the agencies promulgate a new rule and eventually handle your AJD request; or concede jurisdiction and obtain a preliminary jurisdictional determination. None of these options give our industry the certainty it needs to move projects forward and provide our supply chains with the raw materials they need to thrive.

Moreover, the agencies’ refusal to issue AJDs directly undercuts the President’s energy, transportation, infrastructure, manufacturing, and economic priorities. The President’s \$503 billion-dollar “Investing in America” agenda promises to “[rebuild] our roads and bridges using Made in America materials, built by American workers.”⁶ It pledges to support a “strong domestic manufacturing base” and shore up “key industries that are critical to our national security and economic security” like semiconductors, battery and solar plants, and more.⁷ But these investments, and the good-paying American jobs they create, will be merely an empty promise without a robust domestic mining industry.

Put simply, the agencies cannot claim to take this Administration’s priorities seriously⁸ when they are holding AJDs hostage and blocking progress on the very types of projects on which our country’s future depends. *Sackett* was clear that certain features are not federally jurisdictional. At minimum, the agencies can and should resume issuing AJDs for clearly non-jurisdictional features.

Thank you for your prompt attention to this matter. The NMA looks forward to working with you on next steps in crafting a WOTUS rule that complies with the *Sackett* decision, provides regulatory certainty to the mining industry, and protects the environment. Please contact me if you have any questions or we can be of further assistance.

Sincerely,

CAITLIN MCHALE,
Associate General Counsel, National Mining Association.

cc: Ms. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency
Mr. Jaime Pinkham, Principal Deputy Assistant Secretary of the Army for Civil Works, U.S. Department of the Army

⁴Review of Fiscal Year 2024 Budget Request: Agency Perspectives (Part I): Hearing Before the House Transp. and Infrastructure Comm., Subcomm. on Water Res. and Env’t., June 22, 2023, (Statement of Michael L. Connor), *available at* <https://transportation.house.gov/calendar/eventsingle.aspx?EventID=406736> (last visited July 11, 2023).

⁵EPA, Waters of the United States, Amendments to the 2023 Rule, *available at* <https://www.epa.gov/wotus/amendments-2023-rule> (last visited July 11, 2023).

⁶The White House, Investing in America, *available at* <https://www.whitehouse.gov/invest/> (last visited July 11, 2023).

⁷The White House, Press Statement: “Bidenomics is Working: The President’s Plan Grows the Economy from the Middle Out and Bottom Up—Not the Top Down” (June 28, 2023), *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/28/bidenomics-is-working-the-presidents-plan-grows-the-economy-from-the-middle-out-and-bottom-up-not-the-top-down/> (last visited July 11, 2023).

⁸EPA Administrator Michael Regan, Investing in America to Build a Brighter, Healthier Future (May 3, 2023), (“From creating good-paying jobs to strengthening communities that have been left behind, that’s what the President’s Investing in America agenda is all about. With these once-in-a-generation investments from the Bipartisan Infrastructure Law and Inflation Reduction Act, we are delivering on that promise.”) *available at* <https://www.epa.gov/perspectives/investing-america-build-brighter-healthier-future> (last visited July 11, 2023).

Letter of July 13, 2023, to Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Courtney Briggs, Chair, Waters Advocacy Coalition, Submitted for the Record by Hon. David Rouzer

JULY 13, 2023.

The Honorable MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works,
U.S. Army Corps of Engineers, 108 Army Pentagon, Washington, DC 20310.

Re: Moratorium on Approved Jurisdictional Determinations

DEAR ASSISTANT SECRETARY CONNOR:

The Waters Advocacy Coalition (WAC) hereby urges the U.S. Army Corps of Engineers (Corps) to lift the nationwide moratorium it has imposed on new “approved jurisdictional determinations” (AJDs). The Corps’ ongoing refusal to issue AJDs is creating significant uncertainty for job creators, food producers, housing developers and other important sectors of the national economy. In May, the Supreme Court unanimously ruled that the “significant nexus” test used by the Corps and the U.S. Environmental Protection Agency (EPA) to establish jurisdiction over certain wetlands and other water features was inconsistent with the Clean Water Act. Rather than implement the Supreme Court’s decision through the AJD process, the Corps has halted the processing of AJDs, putting numerous projects in limbo.

Last month, you testified before the House Committee on Transportation and Infrastructure and stated that the Corps does not expect to be “back in the AJD business” until EPA and the Corps finalize revisions to the regulatory definition of “waters of the United States” that conform the regulations to the Supreme Court’s decision in *Sackett v. EPA*. Although EPA and the Corps have only recently said they expect to issue a final rule by September 1, 2023, the Agencies have in the meantime left property owners to once again feel their way through jurisdictional questions on a case-by-case basis. Together, the lack of guidance from the Agencies and the Corps’ refusal to issue AJDs present significant barriers to growing a thriving economy and building strong infrastructure.

WAC represents a large cross-section of the nation’s economy, including the construction, real estate, mining, manufacturing, forest products, agriculture, energy, recreation, and public health and safety sectors, all of which are vital to a thriving national economy and provide much needed jobs. Many of WAC’s members construct residential developments, multi-family housing units, commercial buildings, shopping centers, factories, warehouses, waterworks, and other utility facilities. WAC members also construct, operate, and maintain critical infrastructure such as highways, bridges, railroads, tunnels, airports, electric generation, transmission, and distribution facilities, and pipeline facilities. WAC’s agricultural members provide virtually every agricultural commodity produced commercially in the United States, including significant portions of the U.S. milk, corn, cotton, sugar, rice, egg, pork, and beef supply. In addition, other WAC members sell and distribute fertilizer, pesticides, and biotechnology products used by American farmers. WAC members design, build, manage, and maintain golf facilities that generate economic development and tax revenue for thousands of communities across the country. Other WAC members are focused specifically on wildlife and habitat conservation. Members represent producers of most of America’s coal, metals, and industrial and agriculture minerals, which form the building blocks of many of the nation’s supply chains. WAC also has member groups representing the energy industry that generate, transmit, transport, and distribute our nation’s energy to residential, commercial, industrial, and institutional customers.

Sackett provided much needed clarity about the limits of federal regulatory authority under the Clean Water Act by bringing an end to assertions of jurisdiction based on the freewheeling “significant nexus” theory. Moreover, by endorsing the *Rapanos* plurality’s “relatively permanent” test, *Sackett* leaves no doubt that isolated water features, non-adjointing wetlands, and ordinarily dry features are not WOTUS. As such, the Corps can readily issue AJDs in the vast majority of cases where *Sackett* provides a clear answer to the question of whether a feature is WOTUS and do not need to wait for the development of a final rule further revising the definition of WOTUS.

As the Agencies recently represented in the 2023 WOTUS Rule, “only roughly 12% of resources assessed in approved jurisdictional determinations under the *Rapanos* Guidance required a significant nexus analysis[.]” 88 Fed. Reg. 3,004, 3,126. (Jan. 18, 2023). Thus, the regulated community continues to need AJDs to

help inform decisions about how to conduct their operations and use their land even after *Sackett's* invalidation of the significant nexus test.

Although nothing in the Clean Water Act compelled the Corps to establish the AJD process decades ago, having codified the process into its regulations (33 C.F.R. Part 331), the Corps may not just arbitrarily refuse to implement its own regulations. The Corps' current refusal to process AJDs flies in the face of its prior assurance that the agency "recognizes the value of JDs to the public and reaffirms the Corps commitment to continue its practice of providing JDs when requested to do so." RGL No. 16–01, at 1 (Oct. 2016). Equally important, the Corps has acknowledged that several Supreme Court justices in *Hawkes* "highlighted that the availability of AJDs is important for fostering predictability for landowners." *Id.* Indeed, those justices emphasized that "[t]he Act, especially without the JD procedure were the Government permitted to foreclose it, continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation. *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 136 S. Ct. 1807, 1817 (2016) (Kennedy, J., concurring).

In light of these considerations, the Corps must not postpone complying with the *Sackett* decision by refusing to process AJD requests. The moratorium on AJDs significantly harms WAC members whose activities depend on prompt Corps attention to AJD and permitting requests. Freezing this important program until at least September 1 will create yet another bottleneck for stakeholders and the Corps who have been struggling to implement numerous rules over the past several years. In some cases, businesses received an AJD under the 2020 Rule, and were then told that these needed to be redone under the pre-2015 regulatory regime or the 2023 WOTUS rule. Implementing yet another rule will take time that our members don't have. This is a busy season, and this new unwarranted delay just adds to years of hardship.

WAC looks forward to the Agencies' efforts to finalize a revised definition of WOTUS that is faithful to *Sackett* and the *Rapanos* plurality's "relatively permanent" test and plans to weigh in on those revisions. In the meantime, however, the Corps cannot simply freeze its regulatory program. We hereby urge the Corps to immediately resume processing AJDs and thus provide WAC members and other landowners certainty over whether use of their lands is subject to regulation under the Clean Water Act.

Sincerely,

COURTNEY BRIGGS,
Chair, Waters Advocacy Coalition.

cc: The Honorable Michael S. Regan, Administrator

Mr. ROUZER. I also ask unanimous consent to enter into the record a letter sent by Transportation and Infrastructure Committee Chairman Sam Graves and myself and Republican leaders on the Senate Environment and Public Works Committee to Assistant Secretary of the Army for Civil Works Michael Connor and EPA Administrator Michael Regan, dated June 21, asking what steps the agencies are taking to implement *Sackett* and resume reissuance of jurisdictional determinations.

Without objection, so ordered.

[The information follows:]



Letter of June 21, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from U.S. Senators Capito and Lummis, and U.S. Representatives Graves of Missouri and Rouzer, Submitted for the Record by Hon. David Rouzer

CONGRESS OF THE UNITED STATES,
WASHINGTON, DC 20515,
June 21, 2023.

The Honorable MICHAEL S. REGAN,
Administrator,
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington,
DC 20004.

The Honorable MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works,
U.S. Department of the Army, 108 Army Pentagon, Washington, DC 20310.

DEAR ADMINISTRATOR REGAN AND ASSISTANT SECRETARY CONNOR:

We write to request a detailed update on the planned next steps of the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps), collectively “Agencies,” in response to the Supreme Court’s (Court) recently issued decision in *Sackett v. EPA*, 598 U.S. ____ (May 25, 2023) (*Sackett II*). The Court’s ruling reinforces property owners’ rights, protects the separation of powers by limiting your Agencies’ authority to what Congress has delegated in statute, and ensures adherence to the congressional intent in writing the Clean Water Act (CWA). Additionally, the Court upholds the cooperative federalism framework of the CWA, as well as the states’ authority and responsibility to regulate non-Federal waters within their borders. All nine Supreme Court justices agreed that the Biden Administration’s definition of “waters of the United States” (WOTUS) based on “significant nexus” is illegitimate, and a majority of the Court articulated a clear, easily administrable definition of WOTUS.¹

In implementing the Court’s decision, the Agencies must adhere to the majority opinion and not slow-walk compliance with the decision. The Agencies wasted valuable time and resources by prioritizing the promulgation of a rule over the first two years of the Biden Administration; that is now clearly unlawful. Notably, this Administration ignored our repeated admonitions that the Agencies should wait until the Supreme Court acted to proceed,² and our warnings that the rule being drafted would not be “durable.”³ Now the EPA and the Corps must work to bring application of WOTUS quickly and effectively in line with *Sackett II*.

While we are pleased to see *Sackett II* clearly define the scope of the Agencies’ regulatory authority, we are concerned that the Administration is now delaying implementation of the ruling. For instance, in response to the Supreme Court’s decision, some Corps districts have stated that they will temporarily halt the review and issuance of approved jurisdictional determinations.⁴ Such a freeze in processing jurisdictional determinations unnecessarily delays the permitting process for projects. The Agencies previously used taxpayer resources to revisit *already settled* jurisdictional determinations issued by the previous Administration. The Biden Administration must now follow the law by implementing the Supreme Court’s decision with the same fervor it showed in its prior efforts on WOTUS. Failure to do so is indic-

¹ *Sackett v. EPA*, No. 21–454 (U.S. May 25, 2023), available at https://www.supremecourt.gov/opinions/22pdf/21454_4g15.pdf; 598 U.S. ____ (2023).

² *E.g.*, “Graves, Capito Lead EPA Colleagues in Joint Resolution to End WOTUS Rule” (Feb. 6, 2023), <https://www.capito.senate.gov/news/in-the-news/graves-capito-lead-gop-colleagues-in-joint-resolution-to-end-wotus-rule>; “Capito, Graves Lead Colleagues in Filing Amicus Brief on Clean Water Act Authority” (Apr. 19, 2022), <https://www.capito.senate.gov/news/press-releases/capito-graves-lead-colleagues-in-filing-amicus-brief-on-clean-water-act-authority>.

³ *E.g.*, “Capito, EPW Republicans Tell Biden Administration to Halt New WOTUS Definition Rulemaking, Await SCOTUS Decision” (Feb. 23, 2022), <https://www.epw.senate.gov/public/index.cfm/2022/2/capito-epw-republicans-tell-biden-administration-to-halt-new-wotus-definition-rulemaking-await-scotus-decision>.

⁴ E.A. Cruden, et al., “Wetlands Approvals Paused After Supreme Court Decision,” *E&E News* (June 1, 2023), <https://subscriber.politicopro.com/article/eenews/2023/06/01/wetlands-approvals-paused-after-supreme-court-decision-00099717>; Sam Hess, “Sackett Lawyer Urges Agencies to Advance CWA Actions Amid Pause,” *InsideEPA* (June 6, 2023), <https://insideepa.com/daily-news/sackett-lawyer-urges-agencies-advance-cwa-actions-amid-pause> (citing Corps’ Chicago District Regulatory Branch and Sacramento District Regulatory Branch). U.S. Army Corps of Eng’rs, Chicago Dist., “Approved Jurisdictional Determinations Are on Hold,” <https://www.lrc.usace.army.mil/Missions/Regulatory/Jurisdictional-Determinations/>

ative that these recent delays are needless at best, or intentional efforts to halt economic development at worst.

Following the Court's ruling in *Rapanos v. EPA*, the Agencies took a year to provide interim legal guidance and two years to issue the 2008 guidance document on implementing that case.⁵ However, implementing the ruling in *Rapanos* was legally complex because of the 4–1–4 nature of the decision. By contrast, the “continuous surface connection test” upheld by a majority of the Court in *Sackett II* is clear and can be implemented immediately.⁶

In order to comply with the Court's ruling, the Agencies must provide immediate direction to their regional and district offices to apply *Sackett II* in the evaluation of jurisdictional determinations and permits, ensuring clarity and consistent nationwide application of CWA jurisdiction to landowners and the regulated community. Ongoing delays and confusion will hamper project development across the country, including those authorized by the Infrastructure Investment and Jobs Act.

In light of these developments, we request a briefing and response to the following questions no later than June 28, 2023, so that we may fully understand the Administration's plan to implement a truly durable definition of a WOTUS in line with *Sackett II*:

1. What concrete steps are the Agencies taking following *Sackett II* to implement the majority's opinion?
2. Will you direct the Corps to immediately resume the issuance of jurisdictional determinations? If not, please provide a detailed explanation justifying the failure to resume issuance.

Sincerely,

SHELLEY MOORE CAPITO,
United States Senator, Ranking Member,
Committee on Environment and Public Works (EPW).

CYNTHIA M. LUMMIS,
United States Senator, Ranking Member,
EPW Subcommittee on Fisheries, Water, and Wildlife.

SAM GRAVES,
Member of Congress, Chairman,
Committee on Transportation and Infrastructure (T&I).

DAVID ROUZER,
Member of Congress, Chairman,
T&I Subcommittee on Water Resources and Environment.

Mr. ROUZER. And, finally, I ask unanimous consent to enter into the record a response to this letter sent by EPA Assistant Administrator for the Office of Water Radhika Fox, who is here with us today, and Assistant Secretary Connor, dated July 12, in which EPA and the Army Corps of Engineers state their intention of delivering a revised WOTUS rule and ending the pause on issuing judicial determinations by September 1 of this year.

Without objection, so ordered.

[The information follows:]

⁵ Env'tl. Prot. Agency and U.S. Army Corps of Eng'rs, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (June 5, 2007), <https://www.epa.gov/sites/default/files/2016-04/documents/rapanosguidance6507.pdf>; Env'tl. Prot. Agency and U.S. Army Corps of Eng'rs, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (Dec. 2, 2008), https://www.epa.gov/sites/default/files/201602/documents/cwa_jurisdiction_following_rapanos120208.pdf.

⁶ *Supra* note 1, at 4–5.

Letter of July 12, 2023, to Hon. David Rouzer, Chairman, Subcommittee on Water Resources and Environment, from Hon. Radhika Fox, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, Submitted for the Record by Hon. David Rouzer

U.S. ENVIRONMENTAL PROTECTION AGENCY.
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS.
July 12, 2023.

The Honorable DAVID ROUZER,
Chairman,
Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN ROUZER:

Thank you for your June 21, 2023, letter regarding the definition of “waters of the United States.” The U.S. Environmental Protection Agency and the U.S. Department of the Army (agencies) are in receipt of the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase “waters of the United States” consistent with the Supreme Court’s decision in *Sackett*. The agencies are developing a rule to amend the final “Revised Definition of ‘Waters of the United States’” rule, published in the *Federal Register* on January 18, 2023, consistent with the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. The agencies intend to issue a final rule by September 1, 2023. We appreciated the opportunity to brief your staff on the status of the definition of “waters of the United States” on June 27, 2023. Please see EPA’s website at <https://www.epa.gov/wotus/amendments-2023-rule> for more details.

Upon receipt of the *Sackett* decision, the U.S. Army Corps of Engineers (Corps) temporarily paused issuance of all Approved Jurisdictional Determinations (AJDs) while the agencies determined the appropriate next steps. After a short time, the agencies determined it was appropriate to limit the pause to some, but not all AJDs. Therefore, the Corps is currently issuing AJDs for which no water resources are involved (known as dry land AJDs) and for water resources that meet the terms of exclusions under the 2023 Rule or the pre-2015 regulatory regime, where applicable. This includes the longstanding exclusion for prior converted cropland, which our country’s farmers have relied on for many decades.

It is important to note this is a temporary, partial pause while the agencies develop a rule to amend the 2023 Rule, consistent with the *Sackett* decision. As previously stated, the agencies intend to issue the rule by September 1, 2023, and the Corps is prepared to resume issuing all AJDs by the effective date of the rule.

Finally, applicants with pending or new permit actions can choose to rely on preliminary jurisdictional determinations or delineation verifications, as they are not affected by the partial pause. Additionally, applicants can utilize an existing, unexpired AJD to support a pending or new permit action, with the exception of those completed under the vacated Navigable Waters Protection Rule.

Thank you again for your letter. Please contact us if you have any remaining questions or your staff may contact Laura Gentile in EPA’s Office of Congressional and Intergovernmental Relations, or Stacey Jensen, Acting Director of Policy and Legislation in the Office of the Assistant Secretary of the Army for Civil Works.

Sincerely,

RADHIKA FOX,
Assistant Administrator, Office of Water.
MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works.

Mr. ROUZER. Again, I thank the panelists for their very good testimony. I appreciate each one of you being here today.

We will now turn to questions from the panel. I will recognize myself for 5 minutes for such questions.

Ms. Fox, great to see you here. I enjoyed our phone conversation the other day. And as we talked a little bit about WOTUS, and then we all know all nine Justices in the *Sackett* case unequivocally struck down the “significant nexus” test. *Sackett* clearly held

that in order to be a WOTUS, a water has to be relatively permanent or indistinguishable from a traditionally navigable water.

And of course, this was very much at odds with some examples given in the 2023 WOTUS rule, its preamble, and its technical support document.

And using the examples from that same technical support document, I have a series of questions to get a better understanding of where the administration is.

Pursuant to *Sackett*, will water collected in ditches from back-to-back rainstorms be considered a WOTUS?

Ms. FOX. Um—

Mr. ROUZER [interrupting]. Is that a yes or a no?

Ms. FOX. So, thank you, Chairman Rouzer, for the opportunity to address what the agencies are doing on waters of the United States.

We are currently looking carefully at the *Sackett* decision, and we are in the process of developing a targeted rulemaking to bring the 2023 rule into conformity with the *Sackett* case.

You mentioned, sir, the “significant nexus” test, which certainly is in the 2023 rule. That does not comport with the law.

And so, for example, one of the things that we will be doing in that rulemaking is removing significant nexus. So, we intend to follow the law as we continue to implement waters of the United States.

Mr. ROUZER. So, the question again, though, is: Will water collected in ditches from back-to-back rainstorms be considered a WOTUS?

Ms. FOX. So, Chairman, the Army Corps is responsible for making jurisdictional determinations on various water bodies. And they use case-specific and geographically specific information in order to do that. So, those questions are best suited for Army Corps.

Mr. ROUZER. Yes. Well, these questions come from the technical guidance, whatever you call it, your technical support document. And that is where I have gotten them from.

Here’s another question for you. I will go through these, and we will see where we are.

Will areas of land with no water present where an aquatic plant has been dropped—in the technical document it says “dispersed,” I use the word “dropped”—by a bird be considered a WOTUS?

Will areas of land with no water present where an aquatic plant has been dropped by a bird be considered a WOTUS?

Ms. FOX. So, Chairman, as I said, we are moving forward with a focused rulemaking that will bring the 2023 waters of the United States rule into conformity with the law, with the *Sackett* decision.

Mr. ROUZER. All right. I’ve got the trend here. Let me continue on.

Will a rare high watermark be used to determine a WOTUS?

These are all questions that my constituents want answers to.

Will the ground 10 feet away from a stream that fizzles out be considered a WOTUS?

Under the technical support guide, it was, under the 2023 rule.

Will moist soil left under tire tracks on a dirt road be considered a WOTUS?

Will a rice field used out of season for duck hunting be considered a WOTUS?

So, these are the very significant questions that our constituents have. And if we can't answer yes or no now based on the very clear decision of *Sackett*, ruling on *Sackett*, I think you can understand why a lot of us are quite concerned in how the administration is moving forward.

So, let me get to this bottom line here.

Do you intend to make modifications to the 2023 rule beyond just addressing significant nexus in order to comply with *Sackett*?

Ms. FOX. So, thank you for the question, Chairman.

I also want to thank you for sharing the questions that are coming from your constituents on waters of the United States.

Once our good cause rule is final on September 1st, we intend to host implementation discussions with a range of stakeholders who have a stake in the Clean Water Act to—if there are ongoing questions after that rulemaking is completed.

And so, I certainly commit, if you would like for us to speak with the constituents that are raising those questions, we are happy to do so.

As far as your question about how we are addressing this rule-making, we take seriously the law. And we will finalize a rule that adheres to that. So, it will address the issue of significant nexus. We will be removing significant nexus as a test for jurisdiction in that rulemaking, but there are other things in the case that we will also address.

For example, the Justices spoke very clearly on their definition of adjacency, that adjacency, you must have a direct surface connection. That is a definition of adjacency that is narrower than currently in the 2023 rule. So, we are going to address that, too.

The agencies are committed to following the law. We are committed, as we have been from the beginning, to clear and durable implementation, and we will not waver from that responsibility.

Mr. ROUZER. Yes, I will have to cut you off there, since I am 40 minutes over, and I try to set a good example.

Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

On July 10, Ranking Member Larsen and I wrote a letter to EPA and the Corps, asking for your help, in quantifying—this is for you, Ms. Fox—the economic, environmental, and public health consequences of the SCOTUS *Sackett* decision.

I ask unanimous consent this letter be made part of the record.

Mr. ROUZER. Without objection.

[The information follows:]



Letter of July 10, 2023, to Hon. Michael S. Regan, Administrator, U.S. Environmental Protection Agency, and Hon. Michael L. Connor, Assistant Secretary of the Army for Civil Works, U.S. Department of the Army, from Hon. Rick Larsen, Ranking Member, Committee on Transportation and Infrastructure, and Hon. Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment, Submitted for the Record by Hon. Grace F. Napolitano

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, DC 20515,
July 10, 2023.

The Honorable MICHAEL S. REGAN,
Administrator,
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (Mail code: 1101A), Washington, DC 20460.

The Honorable MICHAEL L. CONNOR,
Assistant Secretary of the Army for Civil Works,
U.S. Department of the Army, 108 Army Pentagon, Washington, DC 20310-0108.

ADMINISTRATOR REGAN AND ASSISTANT SECRETARY CONNOR:

We write to request that the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) systematically document the individual and cumulative impacts of the U.S. Supreme Court's (Court) misguided decision in *Sackett v. Environmental Protection Agency* (598 U.S. ____ (2023)) on efforts to protect the nation's water quality and to safeguard the strength of the nation's economy, the health and safety of American families, and the sustainability of the nation's environment.

In its *Sackett* decision, the Court dramatically limited the scope of federal protections over the nation's waters and wetlands provided by the Clean Water Act (CWA). In ignoring the CWA's plain and unambiguous language, as well as almost 5 decades of unbroken, bipartisan protection of the nation's waterbodies, five members of the Court redefined the Act's scope to serve their hyper-conservative judicial philosophy. In doing so, the Court decided to judicially rewrite the tests for determining what rivers, streams, and wetlands remain protected by the CWA and created entirely new criteria—with no precedent in the statute or in the decades-long agency interpretation of the CWA. These new criteria are likely to result in greater adverse impacts to the nation's waters than the Trump administration's 2020 rule-making—a rulemaking that a prior Federal court characterized as causing serious environmental harm.

In the aftermath of the *Sackett* decision, various reports have characterized the *Sackett* decision as “a gift to polluting industries,” “a boon for developers,” “a decision [that] puts private property over any public good,” a decision that “has no basis in science,” and one that is causing regulatory “chaos.”¹

Preliminary analyses estimate that the *Sackett* decision has removed federal protections on roughly half of the existing wetlands in the United States, and an unknown, although likely equally significant impact to other waterbodies. If prior EPA internal estimates on the impacts of the Trump administration's 2020 rule hold true, the *Sackett* decision will result in the loss of CWA protections on up to 70 percent of the nation's river and stream miles. This would mean that critical rivers, streams, and lakes, and the associated waterbodies that have historically benefited from federal protection—including in watersheds flowing into the Chesapeake Bay and national parks like the Everglades—are in jeopardy of degradation or destruction.

The *Sackett* decision has the potential to eliminate over 50 years of progress by federal, state, and local governments, as well as average citizens, in improving water quality virtually overnight. It has returned water quality protection in the U.S. to the failed, patchwork of state-by-state efforts to protect local rivers, streams, and wetlands that was rejected in enactment of the Clean Water Act in 1972 and has reinvigorated the potential state-by-state, “race-to-the-bottom” on protecting our water-related environment.

¹ See <https://www.law360.com/articles/1686914/sackett-s-us-waters-redefinition-is-a-boon-for-developers>; <https://www.concordmonitor.com/My-Turn-The-Supreme-Court-fails-on-the-environment-51232419>; <https://www.eenews.net/articles/post-sackett-chaos-erupts-for-wetlands-over-sight/>; <https://www.eli.org/vibrant-environment-blog/what-comes-next-clean-water-six-consequences-sackett-v-epa> and <https://theintercept.com/2023/05/26/supreme-court-sackett-epa-clean-water-act/>.

Considering the potential overwhelming adverse impacts of this decision to our nation, its citizens, and our environment, it is incumbent on EPA and the Corps to systematically document the individual and cumulative impacts of the *Sackett* decision on national efforts to protect water quality, as well as the myriad of public, private, human health and environmental benefits that are associated with clean water.

Accordingly, we request that EPA and the Corps track the following data:

1. The number, location, acreage, and potential loss of ecological and hydrologic function of waters and wetlands where a jurisdictional determination was initiated, but not completed, prior to the *Sackett* decision.
2. The number, location, acreage, and potential loss of ecological and hydrologic function of waters and wetlands associated with CWA permits issued prior to *Sackett* where the permittee has abandoned (or requested to abandon) the permit.
3. The number, location, acreage, and potential loss of ecological and hydrologic function of wetlands previously protected by the CWA where such protection has been lost because of the *Sackett* decision, including wetlands separated from traditionally navigable waters by “barriers” not considered “illegally” constructed under footnote 16 of the majority opinion.
4. The number, location, and pollutants covered by existing National Pollutant Discharge Elimination System (NPDES) permits which discharge into waters and wetlands no longer protected by the CWA following *Sackett*.
5. The locations and expected population impacted by the loss of CWA protections over intermittent, ephemeral, and headwater streams that provide a source of drinking water for public water systems.
6. Information on alleged violations of sections 402 and 404 of the CWA where the accused did not seek a jurisdictional determination on whether the waterbody was protected by the CWA.
7. Any potential impact on the agencies’ ability to meet the goals of existing federal geographic programs or projects, including the Great Lakes, the Chesapeake Bay, the Florida Everglades, the Puget Sound, San Francisco Bay, and Long Island Sound.

In addition, we request that EPA and the Corps quantify the potential adverse economic impacts of the *Sackett* decision on the following:

1. Any reduced ecological value of waters and wetlands no longer protected by the CWA.
2. Any lost recreational opportunity or recreational value associated with waters and wetlands no longer protected by the CWA.
3. Any potential increase in downstream inundation and flooding.
4. The ability of wetlands to help allay the potential and future impacts of climate change, including severe weather events and coastal and inland flooding.
5. Any potential increase in costs for ecological restoration or protection resulting from loss of CWA protections over waters and wetlands.
6. Any potential increase in drinking water costs or decrease in drinking water source protection and reliability resulting from loss of CWA protection over waters and wetlands.
7. Any potential increase in agricultural water costs or decrease in agricultural water source reliability resulting from loss of CWA protections over waters and wetlands.
8. Any potential increase in oil spill response costs or damages resulting from loss of CWA protections over waters and wetlands.

We also request that EPA and the Corps systematically track and document individual jurisdictional determinations—both positive and negative determinations—with ample scientific, geographic, hydrologic, and visual data (including photographic evidence) to provide stakeholders and practitioners with critical data on how to interpret the new *Sackett* decision.

As Congress begins the discussion on how to respond to the Court’s misreading of the CWA, we request that the agencies provide us and the general public with periodic updates on the information requested in this letter.

We also request any recommendations you might suggest on how Congress and federal agencies can ensure that this nation does not lose progress in meeting the goals of the CWA to “restore and maintain the chemical, physical, and biological in-

tegrity of the Nation's waters," including potential amendments to the CWA to restore protections lost in the *Sackett* decision.

Sincerely,

RICK LARSEN,
Ranking Member, Committee on Transportation and Infrastructure.
GRACE F. NAPOLITANO,
Ranking Member, Subcommittee on Water Resources and Environment.

Mrs. NAPOLITANO. This misguided decision has the potential to squander 50 years of bipartisan efforts to restore and maintain our Nation's rivers, lakes, streams, and wetlands, yet the exact scope of the damage is not yet known.

Will you commit to helping us define how the Court's conservative majority has radically undermined historic clean water protections so we can quickly develop ways to prevent harm to our health and the health of our rivers, streams, and wetlands?

Ms. FOX. Thank you.

And, Congresswoman, thank you also for this reminder of the progress that we have made over the last 50 years because of the Clean Water Act. Again, rivers all over the country on fire are now fishable and swimmable. We should be proud of that.

We are in receipt of your letter and Congressman Larsen's letter, and we will work hard to be responsive and document the information that you have requested.

Mrs. NAPOLITANO. Thank you very much.

Ms. Giner, the scope of your Commission's responsibilities is striking. I don't know how you do it with that small a budget. How do you handle the responsibilities with the budget you are provided annually by Congress? How do you manage?

Ms. GINER. So, we clearly have not done a very good job because we have aging infrastructure. We have two noncompliant wastewater treatment plants and a dam that has been deemed as potentially unsafe.

Right now, we estimate that we have a backlog of around \$473 million worth of construction of estimated—

Mrs. NAPOLITANO [interrupting]. And deferred maintenance. And deferred maintenance.

Ms. GINER. I am sorry?

Mrs. NAPOLITANO. Deferred maintenance.

Ms. GINER. Yes, \$473 million of construction that has come because of deferred maintenance. This includes rehabilitation of two of our international wastewater treatment plants that are not complying with water quality discharge permit standards.

This includes dam safety and canal repairs that deliver waters to communities and farmers in Texas that cost about \$260 million.

And then, of course, upgrades to our levees for flood protection is required by FEMA for California, New Mexico, and Texas.

And, of course, every year, there is about \$11 million worth of work that we do not do, and that has accumulated over time, which includes sediment, levee repairs, equipment that requires maintenance.

Mrs. NAPOLITANO. You borrow from other entities.

Ms. GINER. We actually—I call ourselves the poor cousins. Whenever some of the other agencies have equipment that they no

longer need, we definitely sign up to receive much of that equipment.

But I will say that in fiscal year 2023, we received increased funding in construction precisely for new equipment, and in 1 year, we bought 44 pieces of equipment, when in 10 years, we had bought 50.

Mrs. NAPOLITANO. Can you describe the economic and environmental benefits that could be obtained if you were able to fully fund your critical construction and operation and maintenance needs?

Ms. GINER. So, we serve 2,000 miles and 15 million residents from California to Texas. And the failures of our levees, our wastewater treatment plants have varying effects in these communities.

The negative impacts from cross-border sewage in southern California have closed those beaches for over 500 days, and, of course, have reduced the economy and tourism.

Mrs. NAPOLITANO. All right. How would the contributed funds authority included in the President's budget help IBWC meet its mission?

Ms. GINER. So, the contributed funds authority is an authority that other agencies have, like Army Corps of Engineers, and so, the absence of that does not allow for IBWC to receive funds from Federal and State agencies for common mission items because of the Antideficiency Act.

Thus, having the ability to share the cost burden with other agencies on common mission-related activities will allow us to address these needs.

For example, CPB uses our levees for patrolling the border, causing damage to our levees. At this time, contributed funds authority will allow us to partner with them to repair our levees with CBP.

Mrs. NAPOLITANO. Thank you.

Dr. Bernstein, my time is up, but I have some questions for you that I will submit in writing to you, as well as the other members.

I yield back.

Mr. ROUZER. The gentlelady yields back.

Mr. Bost.

Mr. BOST. Thank you, Mr. Chairman.

Assistant Administrator Fox, farmers in deep, southern Illinois where I live and I represent are tired of the Federal Government, by the way, overregulating the waters to advance Biden's radical green agenda.

They have been jockeyed back and forth under the WOTUS regulation over the past year. And despite questions that are legally being raised and an impending Supreme Court decision on the final rule, the administration implemented the rule anyway, just to have it overturned within the first 3 months.

And I don't know what this accomplished. It actually accomplished nothing. It left American farmers and many others in a state of limbo and confusion.

And now your agency has just amended the rule in the next 2 months. I don't know how anyone else—but this feels like the administration knows the rule, knows the rule, and is—it is wrong, but that it is continuing to push to see just how much they can get away with.

Our farmers and manufacturers are going to have to pay the price, because you can't get it straight. It is no wonder that people around the this Nation, especially those trying to feed and provide for the food and fiber that this Nation needs, just doesn't trust Government at all.

As the EPA works to amend the flawed regulation, I need to know if you will commit to properly consider the needs of the farmer and other small businesses who produce the food and fiber that this Nation depends on?

Ms. FOX. Yes. We absolutely commit to that.

And, Congressman, one of the things that I have done in the 2½ years that I have been in this role as Assistant Administrator, really following the leadership of our Administrator, Administrator Regan, is to listen to all sides.

This EPA has engaged more with the agricultural community than any administration. As we developed the waters of the United States rule, we held listening sessions. We met with farmers and ranchers and developers all around the country. And we value that input.

And, in fact, in the 2023 rule, we put in place provisions that we heard time and again from farmers and ranchers that was important.

For example, we codified a number of exemptions, such as prior converted cropland, artificial ponds, really at their request. So, we absolutely commit to that ongoing engagement.

Mr. BOST. But, yet—

Ms. FOX [interrupting]. We made better policy because of that. And as it relates to the—

Mr. BOST [continuing]. But yet you could not answer the questions that the chairman asked a while ago, and that is the problem that we deal with, with our farmers and other people.

They have the questions, and Government doesn't give it the answer because they—I have got to watch what I am going to say, because I don't want to say something that will look terrible on the record.

But it really looks like you don't know what you are doing, or you are just trying to force an idea or an agenda that is detrimental to those people who we represent, because you can't give answers.

Ms. FOX. What we are doing is working to make sure that there is a clear, legal, and implementable definition of waters of the United States.

The *Sackett* decision—

Mr. BOST [interrupting]. I think the Supreme Court has already ruled that you didn't do that, right?

Ms. FOX. The *Sackett* decision was focused—ruling on a previous enforcement case. It was not a decision about the 2023 rule. But clearly there are aspects of the 2023 rule that are inconsistent with the *Sackett* decision. Therefore, we are moving quickly to provide regulatory certainty by striking the aspects of the 2023 rule that are no longer consistent.

Our rationale for doing that is because we care very much about making sure that the entire regulated community has certainty and clarity, and that is what our—

Mr. BOST [interrupting]. I think it is a shame that you talk about 50 years ago when the rivers were burning and we needed to do something. That is fine.

But this is the problem that the American people feel. When the overreach comes so far that you leave the navigable waters that you should be governing and controlling—and we all want clean water—to worrying about what water runs off the brim of my hat is when you have gone too far.

And that is exactly what this rule has done. And that is exactly what farmers feel. That is what my constituents feel. That is what people with construction sites feel, that they might be just building a new addition onto their home.

Every time we turn around, Government is on our backs, and enough. But yet you get court rulings, but you can't answer the questions that are put before you.

I appreciate you being here today, but you didn't answer my questions, and you didn't answer the chairman's questions.

And with that, I am out of time, and I yield back.

Mr. ROUZER. The gentleman yields back.

Mr. Ryan.

Mr. RYAN. Thank you, Mr. Chair.

I also want to thank my colleague for letting me skip one ahead.

I want to also thank our witnesses, each of you, for your service, the work that you are doing, and just for your time here today. We appreciate it.

Two specific questions local to my district and the community that I represent, which is New York's 18th Congressional District, the beautiful Hudson Valley of New York, north of New York City.

In my district, we clearly, unequivocally, have a lead water crisis. Last month, the Environmental Advocates of New York published a report, which I would like to enter into the record, Mr. Chair.

Mr. ROUZER. Without objection.

[The information follows:]

Memo on Lead Service Lines in Poughkeepsie, NY, May 22, 2023, from Environmental Advocates NY, Submitted for the Record by Hon. Patrick Ryan

ENVIRONMENTAL ADVOCATES NY
MEMO ON LEAD SERVICE LINES IN POUGHKEEPSIE, NY
5/22/23

Poughkeepsie has a lead poisoning crisis, with one of the highest rates of childhood elevated blood lead levels in the state (approximately 1 in 10 children are lead poisoned). Contributing to this crisis are an estimated 5,500 lead service lines (LSLs) in the city, which connect water mains running under streets to the internal plumbing in homes and businesses. LSLs contaminate drinking water with a dangerous neurotoxin that is especially harmful to pregnant people and infants. There is no safe level of lead exposure.

Poughkeepsie's policies towards LSLs appear to be a collection of worst practices when it comes to protecting residents from lead in drinking water, exacerbating environmental injustices that disproportionately harm the city's low-income communities and communities of color. The city also currently has no plan to achieve 100% LSL replacement.

This issue has been brought to light thanks to the thorough research of Cooper Miller, a Poughkeepsie resident who has an LSL. Over the past two years, Cooper has expressed his concern about LSLs through multiple avenues, including a private presentation to the City Council in the Fall of 2022. To our knowledge, neither the

former nor current mayoral administration responded to his concerns with a change in city policy.

The below is an overview of the current situation as well as policy recommendations that the city can adopt to get the lead out of drinking water. Significant questions also still remain to be answered, especially Veolia's relationship with LSL replacement after taking over maintenance of the city's water distribution system in 2019.

1. *Poughkeepsie has only replaced 14 LSLs since 2018, and has spent exorbitantly more per LSL replaced than any other city in New York. By wasting resources, the city has kept more residents exposed to lead than necessary.*

In 2018, Poughkeepsie received a \$544,745 grant from the NYS Department of Health (DOH) to conduct full LSL replacements at no cost to homeowners. According to data provided by the NYS Department of Health, as of July 2022, Poughkeepsie had only spent \$400,000 and replaced 14 LSLs. Over \$100,000 of this spending was not used to directly replace LSLs—it is unclear how the city spent this money. It is possible that the city used the \$100,000 to develop an inventory of LSLs in its distribution system.

| Date | Amount Spent | Number of LSLs Replaced | Average Cost per LSL Replaced |
|----------------------------|---------------------|-------------------------|-------------------------------|
| February 2019 | \$45,481.98 | 0 | N/A |
| July–October 2019 | \$35,176.30 | 0 | N/A |
| March 2020 | \$203,239.34 | 11 | \$18,476 |
| April–September 2020 | \$20,949.93 | 0 | N/A |
| April 2021 | \$57,819.11 | 2 | \$28,909 |
| September 2021 | \$29,746.09 | 1 | \$29,746 |
| January–April 2022 | \$7,516.16 | 0 | N/A |
| Totals | \$399,928.91 | 14 | N/A |

The average cost per LSL replaced in Poughkeepsie ran as high as \$29,000, far exceeding the normal range of \$5,000–\$10,000. The city has not provided an explanation for why it spent so much money replacing so few LSLs. Meanwhile, thousands of LSLs across the city continue to contaminate residents' drinking water every day.

In contrast, the City of Albany spent 100% of its DOH grant by March 2021, replacing 74 LSL at an average cost of \$6,980 per LSL replaced. Eight DOH grant recipients spent all of their funds by July 2021, replacing between a collective 951 LSLs with their funding, with an average cost per LSL replaced ranging from \$3,200 to \$8,600.

Recently, and potentially due to Cooper's questions, Poughkeepsie awarded an LSL replacement bid for \$175,000 to Sun Up Construction Corporation, which within the last week has begun reaching out to property owners to begin LSL replacements. It is not clear why this bid exceeds the \$145,000 in funding that DOH records indicate remain. The former mayoral administration had also told the Poughkeepsie Journal in August 2022 that only \$80,000 in DOH LSL funding remained.

2. *Poughkeepsie has allowed partial LSL replacements (partial LSLR), which cause lead levels to spike while keeping part of the LSL in place.*

In Poughkeepsie, ownership over the LSL is split between the property owner and the city. The property owner owns the portion of the LSL between the building and the curb, and the city owns the portion of the LSL between the curb and the water main. Partial LSLR is a procedure where only half of the LSL is replaced, either the public or private portion of the line. Partial LSLR causes lead levels to spike in the short term due to pipe disruption, and does nothing to reduce lead levels in the long term because a portion of the LSL remains in place. Forcing residents to pay for half of an LSL replacement also disproportionately burdens low-income residents who are already struggling to pay for basic needs like food and medicine.

In 2021, Cooper wanted to replace his LSL, and contacted the city about a replacement. The city informed Cooper that he could pay to replace his half of the

LSL, but the city would not replace their half. Cooper proceeded with a partial LSLR at a cost to him of about \$7,000.

3. *Poughkeepsie has only conducted federal compliance sampling for lead in wealthy, white areas of the city. The city has also sampled at city employee homes, a clear conflict of interest.*

All water utilities are required to test for lead by the US Environmental Protection Agency (EPA). If a utility's "90th percentile" of sampling exceeds 15 parts per billion (ppb), the utility is in violation of EPA's Lead and Copper Rule (LCR) and must notify customers and take corrective actions.¹ Poughkeepsie tests for lead every 3 years.

Poughkeepsie is only sampling for lead in predominantly wealthy, white neighborhoods in the south of the city. While EPA does not require a certain geographic distribution in lead sampling, the city should strive to identify risks from lead in drinking water in areas of the city most impacted by the lead poisoning crisis.

Poughkeepsie tested 30 homes for lead as part of its compliance sampling in 2020. At least 50% of these homes were owned by city employees. Two homes were owned by Department of Public Works employees, including the Superintendent. This presents a clear conflict of interest—the city has an interest in not exceeding EPA's LCR. There has been no evidence of sample tampering, but the possibility that tampering could occur is cause enough for concern.

The city has not announced any changes to its sampling plan for upcoming compliance testing.

4. *Poughkeepsie has not applied for federal funding to inventory or replace LSLs.*

The federal Bipartisan Infrastructure Law includes a historic \$15 billion to inventory and replace LSLs (though this is expected to address only about a third of the need to replace all LSLs nationwide). New York will receive over \$500 million of this funding over the next 5 years. \$104 million is available this year, and dozens of communities submitted eligible applications. Poughkeepsie is not on the list. The failure to apply for funding to get the lead out of drinking water shows a lack of seriousness by the city in addressing the problem.

POLICIES TO ACHIEVE 100% LSL REPLACEMENT

The only way to fully protect the public from lead in drinking water is to remove the sources of lead entirely. Poughkeepsie needs a plan to achieve 100% LSL replacement, and should:

1. *Adopt a Get the Lead Out Ordinance, modeled off of the ordinance recently enacted by the City of Troy.*

Section 14.79 of the Poughkeepsie Administrative Code details the regulations governing service lines in the city, and would likely need to be amended by a Get the Lead Out ordinance. Here are the specific components of Troy's ordinance, and improvements that we believe could be made in a Poughkeepsie ordinance to establish an even more health-protective policy:

- a. Declares LSLs an "unsafe and hazardous installation"

Currently, LSLs are not illegal in New York State. There are no requirements for property owners to replace LSLs and local governments are only required to replace LSLs in limited circumstances (such as after certain violations of US EPA's lead in drinking water regulations). This language codifies as city policy that LSLs pose a risk to human health and should be replaced.

Recommendation: We recommend that galvanized service lines (GSLs) also be considered "unsafe and hazardous installations." GSLs are coated in zinc, which contains lead that can leach into drinking water regardless of whether another portion of the service line is made of lead. The US EPA has identified GSLs as a threat to human health, and allows federal LSL replacement funds to be used to replace GSLs. Troy has stated that it intends to replace GSLs even though they were not specifically mentioned in their ordinance.

- b. Requires the city to implement a program to replace LSLs

As written, Troy's ordinance requires the city to replace all portions of LSLs that it owns. Troy is required to offer to replace a customer's portion of an LSL during

¹Poughkeepsie has not exceeded EPA's 15 ppb action level, but elevated levels of lead could still be contaminating drinking water in the city. The level of lead leaching from LSLs may fluctuate over time due to water chemistry, temperature, and flow rate, or from disruption by street construction.

each replacement, but it reserves the right to charge customers for that replacement. The ordinance does allow Troy to pay to replace a private portion of an LSL under certain conditions—these conditions are broad, and Troy has said that it intends to offer to pay the full cost for all LSL replacements it initiates.

The ordinance requires Troy to secure the consent of the property owner before conducting a full LSL replacement. If a property owner refuses to provide consent, the property owner must pay to replace their portion of the LSL within 6 months. If they do not, Troy reserves the right to disconnect water service.

The ordinance was structured in this way because, at the time, Troy believed that there were legal obstacles to spending certain public funds to replace privately owned portions of LSLs. Language was included in the recently enacted New York state budget in part to clarify that local governments can spend public funds to replace privately owned portions of LSLs.

Recommendation: We recommend that Poughkeepsie's ordinance simply require Poughkeepsie to offer to pay the full cost for any LSL replacement that it initiates.

- c. Prohibits partial LSLR and prohibits repairs on LSLs (the full LSL must be replaced if a leak or break is detected)

This requirement ensures that residents' health is not put at risk from partial LSLRs. It also ensures that LSLs are replaced when they are uncovered during a leak or break. It is much cheaper to remove the full LSL in those instances rather than repairing the pipe and returning in the future to dig up the street again to conduct the full replacement.

- d. Authorizes the city to access and enter properties for the purpose of inspecting or replacing LSLs, and to disconnect water service if permission is not granted.

Poughkeepsie has general authority to access properties for the purpose of inspecting water infrastructure under its city code, but inspecting and replacing LSLs are not specifically mentioned as covered activities. Similar authorization language to Troy's ordinance could be incorporated into Poughkeepsie's city code.

Recommendation: We support the establishment of compliance mechanisms to ensure that property owners, both homeowners and landlords, cannot refuse a free LSL replacement. While we are willing to accept the use of water shut-offs to achieve compliance from homeowners, we do not support the use of water shut-offs at apartment buildings when landlords are non-cooperative or non-responsive, which would cause harm to tenants.

Tenants should not be deprived access to water because a landlord failed to prioritize their wellbeing. Some landlords may refuse to allow city officials into their buildings to hide other code violations that are causing unsafe and hazardous conditions for tenants. And ultimately, some absentee landlords who already care little for their tenants might not care that water has been shut-off to their properties.

We recommend identifying an alternative enforcement mechanism to ensure that landlords comply with LSL replacements, or including language that water shut-offs will only be used at rental properties as a last resort after all other mechanisms to hold landlords accountable have been exhausted.

- e. Authorizes the creation of a program to provide water filters to residents with LSLs

Some residents will have to wait years before work crews arrive at their street; no one should be exposed to a dangerous neurotoxin in their drinking water during that time. We support providing filters to residents that report an LSL, which would incentivize responses to build out an LSL inventory.

Filtration is an effective and inexpensive short-term solution to protect public health. A pitcher filter certified to remove lead can cost less than or around \$100, including replacement filter cartridges. Providing filters should not be seen as "taking away" resources from lead remediation. Rather, providing filters and replacing LSLs should be seen as complementary, equally-essential components of protecting residents from lead in the short term and the long term.

- f. Additional recommendations: There are several policies not specifically included in Troy's ordinance that Poughkeepsie could adopt:

Require the use of copper service lines to replace LSL: Troy is planning to use copper, and Albany's city code requires the use of copper. Copper is a safe and well-tested material. A recent landmark report described the dangers of plastic piping. The Healthy Building Network recommends copper, and the International Association of Fire Fighters and United Association of Plumbers and Pipefitters have voiced their concerns with plastic pipes, with off-gassing of chemicals during construction posing health risks to workers.

Describe properties/areas for prioritization: Poughkeepsie should prioritize LSL replacements in Disadvantaged Communities and at day cares, schools, and homes with children with elevated blood lead levels. Tying LSL replacements to streets being repaved/repared can also help make replacements more efficient by digging up the street only once rather than twice.

Housing and economic justice: Landlords should be required to inform tenants about the presence of an LSL. LSL replacements should be conducted by union labor, pay prevailing wage, and where possible utilize apprenticeship programs to open employment opportunities to local community members.

2. *Develop a funding plan to implement the Get the Lead Out Ordinance and achieve 100% LSL replacement.*

The New York state budget included language authorizing local governments to bond to access loans to inventory and replace LSLs (both publicly and privately owned portions) and pay back those loans over a 30 year period. Given the estimated 5,500 LSLs in Poughkeepsie, and an estimated cost per LSL replaced of \$10,000 (assuming Poughkeepsie can lower its current cost per LSL replaced), a \$55 million bond would allow the city to fund the replacement of 100% of its LSLs.

Having access to a significant amount of upfront funding would allow Poughkeepsie to replace LSLs as quickly and efficiently as possible—work could be completed in 5–10 years or even faster (Newark, NJ replaced all of its 23,000 LSLs in just 3 years). Larger construction bids are also more likely to attract firms using union labor, which is a key component of ensuring LSL replacements further economic justice.

Poughkeepsie could pay back this loan over time by securing state and federal grants. There are a number of potential grant sources that the city could access: city or county American Rescue Plan Act (ARPA) funds, federal Bipartisan Infrastructure Law funds, state Clean Water Infrastructure Act funds, and state Environmental Bond Act funds. The city could also use water rate revenue for this purpose.

3. *Apply for federal Bipartisan Infrastructure Law funding.*

As described above, Poughkeepsie hasn't applied for the first year of federal Bipartisan Infrastructure Law funding. The city should commit to submitting applications each of the next 4 years to maximize its chances for receiving LSL replacement funds. The second application cycle is currently open—Poughkeepsie has until August 25 to submit an application for Round 2.

Mr. RYAN. Thank you, Mr. Chair.

The report, in brief, shows that 10 percent of children in the city of Poughkeepsie that I represent, the highest of any city in New York State, have elevated levels of lead in their blood stemming from the 5,500 lead pipes that run through the city.

We also think this might be an undercount, because many of the samples that are mandated by Federal compliance have only been collected from homes in more affluent areas of that city.

Ms. Fox, unfortunately, the city of Poughkeepsie has missed the first deadline to apply for some of the IIJA funding through the Clean Water State Revolving Fund.

I would ask if you and your team would commit to a visit from the EPA to the city to help the city—certainly my team will be engaged—to make sure that we can address this issue.

Ms. FOX. Thank you for raising that question. And, Congressman, I would be pleased to personally come to Poughkeepsie. I actually have family that live there. But I would be happy to come to Poughkeepsie and meet with the folks there locally.

And hearing the statistics that you just cited, they are concerning. The science is clear, there is no safe level of exposure to lead, especially for children. That is why this administration has put forward the most ambitious plan to tackle this issue. We have the Lead Pipe and Paint Action Plan.

And as it relates specifically to a missed deadline around the first year of funding through the Bipartisan Infrastructure Law, this is absolutely the right time to be having this discussion, because the State of New York is developing their intended use plan for next year.

We also have a lot of resources for Poughkeepsie, and really all communities, to be able to access the historic \$15 billion in funding. We have a guidance document that could help local communities in developing their lead service line inventories.

We have technical assistance centers that we have set up all around the country for this very purpose, and Poughkeepsie and other communities can receive that technical assistance free of charge to help them with their inventories, to help them sort of navigate all of these funding programs that are so exciting and available right now.

So, we would be happy to provide that support, because we have got to get the lead out.

Mr. RYAN. Yes. Thank you. And we appreciate it.

And I am proud that, at this moment, we are finally addressing a lot of these issues that have been, my whole lifetime, that we have been working on this. So, I appreciate your leadership and your commitment.

One other separate point. This weekend, and it is a multipart story, there was an explosive story in the Wall Street Journal, which I would like to enter into the record as well.

Mr. ROUZER. Without objection.

[The information follows:]

Article entitled, “America Is Wrapped in Miles of Toxic Lead Cables,” by Susan Pulliam, Shalini Ramachandran, John West, Coulter Jones, and Thomas Gryta, Wall Street Journal, July 9, 2023, Submitted for the Record by Hon. Patrick Ryan

AMERICA IS WRAPPED IN MILES OF TOXIC LEAD CABLES

Telecom companies laid them decades ago and thousands were left behind, posing a hidden health hazard today, a WSJ investigation found

by Susan Pulliam, Shalini Ramachandran, John West, Coulter Jones, and Thomas Gryta

The Wall Street Journal, July 9, 2023, 8:18 a.m. ET

<https://www.wsj.com/articles/lead-cables-telecoms-att-toxic-5b34408b>

AT&T, Verizon and other telecom giants have left behind a sprawling network of cables covered in toxic lead that stretches across the U.S., under the water, in the soil and on poles overhead, a Wall Street Journal investigation found. As the lead degrades, it is ending up in places where Americans live, work and play.

The lead can be found on the banks of the Mississippi River in Louisiana, the Detroit River in Michigan, the Willamette River in Oregon and the Passaic River in New Jersey, according to the Journal’s tests of samples from nearly 130 underwater-cable sites, conducted by several independent laboratories. The metal has tainted the soil at a popular fishing spot in New Iberia, La., at a playground in Wappingers Falls, N.Y., and in front of a school in suburban New Jersey.

The U.S. has spent decades eradicating lead from well-known sources such as paint, gasoline and pipes. The Journal’s investigation reveals a hidden source of contamination—more than 2,000 lead-covered cables—that hasn’t been addressed by the companies or environmental regulators. These relics of the old Bell System’s regional telephone network, and their impact on the environment, haven’t been previously reported.

Lead levels in sediment and soil at more than four dozen locations tested by the Journal exceeded safety recommendations set by the U.S. Environmental Protection Agency. At the New Iberia fishing spot, lead leaching into the sediment near a cable in June 2022 measured 14.5 times the EPA threshold for areas where children play. “We’ve been fishing here since we were kids,” said Tyrin Jones, 27 years old, who grew up a few blocks away.

For many years, telecom companies have known about the lead-covered cables and the potential risks of exposure to their workers, according to documents and interviews with former employees. They were also aware that lead was potentially leaching into the environment, but haven’t meaningfully acted on potential health risks to the surrounding communities or made efforts to monitor the cables.

Doctors say that no amount of contact with lead is safe, whether ingested or inhaled, particularly for children’s physical and mental development. Even without further exposure, lead can stay in the blood for about two or three months, and be stored in bones and organs longer. Risks include behavior and learning problems and damage to the central nervous system in children, as well as kidney, heart and reproductive problems in adults, according to U.S. health agencies.

The Journal’s findings “suggest there is a significant problem from these buried lead cables everywhere, and it’s going to be everywhere and you’re not even going to know where it is in a lot of places,” said Linda Birnbaum, a former EPA official and director of the National Institute of Environmental Health Sciences, a federal agency.

In Coal Center, Pa., medical tests independently sought by the mother of 6-year-old twins, Joyanna and Beau Bibby, and shared with the Journal, showed they had high levels of lead in their blood. The tests were taken a few days after they played in a lot next to their house under a drooping cable.

In response to the Journal’s reporting, AT&T, Verizon and other telecom companies that succeeded Ma Bell said they don’t believe cables in their ownership are a public health hazard or a major contributor to environmental lead, considering the existence of other sources of lead closer to people’s homes. They said they follow regulatory safety guidelines for workers dealing with lead.

The companies and an industry group representing them said they would work together to address any concerns related to lead-sheathed cables. “The U.S. telecommunications industry stands ready to engage constructively on this issue,” said a spokeswoman for USTelecom, a broadband association that represents companies in the industry.

“The health, safety and well-being of our people, our customers, and our communities is of paramount importance,” AT&T said in a written statement. The company said the Journal’s reporting on lead-sheathed cables “conflicts not only with what independent experts and longstanding science have stated about the safety of lead-clad telecom cables but also our own testing.”

In a written statement, Verizon said it is “taking these concerns regarding lead-sheathed cables very seriously,” and is testing sites where the Journal found contamination. It added: “There are many lead-sheathed cables in our network (and elsewhere in the industry) that are still used in providing critical voice and data services, including access to 911 and other alarms, to customers nationwide.”

Some former telecom executives said companies believed it was safer at times to leave lead cables in place than remove them, given the lead that could be released in the process.

The lead-covered cable network included more than 1,750 underwater cables, according to public records collected by the Journal. A Journal analysis of the five most densely populated states, and more than a dozen of the most densely populated counties in the nation, identified about 250 aerial cables alongside streets and fields next to schools and bus stops, some drooping under the weight. There are likely far more throughout the country.

Journal reporters visited about 300 cable sites around the U.S. and collected roughly 200 environmental samples at nearly 130 of those sites. The samples were analyzed for lead content by Pace Analytical Services, an accredited environmental-testing lab. A researcher at the University of Washington who analyzed the chemical fingerprint of lead at some of those sites verified that the lead contaminating the water and soil likely originated from the cable.

AMONG THE FINDINGS:

- Roughly 330 of the total number of underwater cable locations identified by the Journal are in a “source water protection area,” designated by federal regulators as contributing to the drinking-water supply, according to an EPA review performed for the Journal.

- Aerial lead cabling runs alongside more than 100 schools with about 48,000 students in total. More than 1,000 schools and child-care centers sit within half a mile of an underwater lead cable, according to a Journal analysis using data from research firm MCH Strategic Data.
- In New Jersey alone, more than 350 bus stops are next to or beneath aerial lead-covered cables, a Journal analysis of NJ Transit data found.
- Roughly 80% of sediment samples taken next to underwater cables, which the Journal tested, showed elevated levels of lead. It isn't known if the level of leaching is constant; experts say old cables tend to degrade over time.

Ben Grumbles, executive director of an association of state environmental regulators, called the Journal's findings disturbing. "This is a type of toxic exposure that isn't on the national radar and it needs to be," he said. "There is a need to act and clean it up."

AN ANCIENT NETWORK

American Telephone & Telegraph laid nearly all the cables in question between the late 1800s and the 1960s as it built out telephone service across the U.S. The cables, often containing hundreds of bundled copper wires, had a thick jacket of lead for insulation, to prevent corrosion and to keep out water. For underwater cables, steel cords sometimes surround the lead for further protection.

When technology advanced and companies turned to plastic sheathing and, later, fiber optics, they often left the old lines in place.

With the breakup of the Bell System's monopoly in 1984, regional phone companies became independent competitors that consolidated over time to form the backbone of modern carriers AT&T and Verizon. Tracking the current owners of old cables isn't a simple task after decades of deals, and the companies themselves in many instances denied their ownership. The Journal provided lists of cable locations to major telecom providers, which declined to detail cable locations.

To track the underwater cables, the Journal collected more than 40,000 pages of records from federal and state government offices, including applications to the U.S. Army Corps of Engineers to install the cables that were approved more than a century ago. Removing Army Corps-approved cables at any time would routinely require a permit or be noted in the original paperwork, officials say. The Journal tally of abandoned lead cables is sure to be an undercount.

Researchers Seth Jones and Monique Rydel Fortner, from the environmental consulting firm Marine Taxonomic Services, collected lead, soil and water samples at the Journal's request—a process that included diving expeditions at some locations. They have become experts in lead cables since they discovered them under Lake Tahoe more than 10 years ago and have advocated for their removal. The Environmental Defense Fund, a nonprofit advocacy group, provided guidance and \$85,000 to MTS to partly fund its field research for the project.

The Journal found that where lead contamination was present, the amount measured in the soil was highest directly under or next to the cables, and dropped within a few feet—a sign the lead was coming from the cable, experts said.

The Journal didn't find lead in all the locations it tested. The level of contamination can vary in water and soil, depending on environmental and other factors. (See article describing the Journal's methodology.)

The most obvious public-health risks from lead contamination remain from well-known sources such as lead paint, leaded gasoline and lead piping that brings drinking water to homes. The EPA and other agencies have spent billions of dollars to reduce lead in the environment. In 1997, health regulators said average blood lead levels in children and adults had dropped more than 80% since the 1970s.

Yet large numbers of American children continue to show levels of lead in their blood—more than half of those tested, according to a Quest Diagnostics study published in 2021, based on an analysis of test results from more than one million children under age 6.

"A new, uncontrolled source of lead like old telephone cables may partly explain" why children continue to have lead in their blood, said Jack Caravanos, an environmental public-health professor at New York University, who assisted the Journal in its research. "We never knew about it so we never acted on it, unlike lead in paint and pipes."

Gordon Binkhorst, an environmental consultant and expert on lead sampling, said he believes cables should be removed because they are "continuing sources of soil and potentially groundwater contamination." Other experts said covering the cables and the area around them could reduce the risk.

Binkhorst reviewed the sampling methods used by the Journal and said they were appropriate techniques for basic testing of whether lead was present in the soil and water near the cables, using a certified environmental testing lab.

THE KNOWN RISKS

AT&T has previously noted the risks from its cables. “Underground cable presents real possibilities for overexposure” for workers removing them, AT&T said in a 2010 presentation about employee safety at an industry conference. “Some older metropolitan areas may still have over 50% lead cable,” it added.

The company considered the potential cost and environmental impact of removing the cables daunting, said Braden Allenby, a former top AT&T environmental health and safety official, now a professor at Arizona State University. “It was standard operating procedure to abandon those cables in place,” he said. “We kept the discussion internal and informal. We didn’t try to quantify the problem or speak to the economics overall.”

AT&T didn’t respond to requests for comment on Allenby’s assertions. In its statement, the company said: “For decades, we have managed legacy lead-clad cables in compliance with applicable laws and regulations, and we have followed industry-wide best practices to maintain this legacy infrastructure in a way that’s safe for all based on established science.”

AT&T has been involved in litigation over cables in Lake Tahoe. In 2021, the California Sportfishing Protection Alliance, an environmental group, sued AT&T over two cables in the lake, more than 6 miles long in total, according to permits. In a 2021 settlement, in which AT&T didn’t admit wrongdoing, the company agreed to remove the cables at a cost of up to \$1.5 million. The company said it had stopped using the cables, no longer owned them and that its easements, or legal rights to cross the lake, had ended.

The cleanup has been delayed repeatedly. AT&T’s contractor has cited logistical issues including that removal could “disrupt nesting birds (bald eagles, Peregrine falcon, osprey),” according to an email reviewed by the Journal.

The Journal, through Marine Taxonomic Services, tested water samples from Lake Tahoe and found high levels of lead in several locations. Samples taken in March at either end of a severed cable in Emerald Bay, an inlet in Lake Tahoe known for its turquoise water, showed lead at 5,510 parts per billion and 38,000 parts per billion. Marine Taxonomic Services isn’t a party to the AT&T lawsuit.

The EPA says chronic exposure to more than 2.5 parts of lead per billion in fresh water poses risks to aquatic life. While it doesn’t have any guidelines for safe levels of lead in natural bodies of water, the EPA can advise local authorities to alert the public if drinking water out of the tap registers 15 parts of lead per billion or higher. (One part per billion is equal to about one drop of water in a swimming pool, environmental researchers say.)

Parts of Lake Tahoe are used for drinking water, though any potential risk would be for swimmers ingesting water near the cables. Compared with the EPA’s guideline for water out of the tap, the March tests in Emerald Bay were 367 times and 2,533 times the threshold, respectively.

In May, the Journal also found high lead levels in roughly the same locations in Emerald Bay at 7,410 parts per billion and 1,390 parts per billion, respectively.

AT&T hired environmental-consulting firm Haley & Aldrich during the litigation to take samples in March 2021 at five locations in Lake Tahoe, two of them close to the cables. The tests found “very low” levels of lead in the water, according to a report provided by AT&T to the Journal. The lake’s “water quality is not adversely impacted” by the cables, the study said, adding that samples were “largely non-detected for lead,” including those “collected nearest the subject cables.”

In the Journal’s testing at Lake Tahoe, lead was found not just near the cables, but also moving away from the severed Emerald Bay cable toward the beach. On the south side, samples ranged from nearly five times the EPA limit for drinking water to more than eight times, or 132 parts per billion, at a sample taken 20 feet away from the cut end.

Experts say it is common to find varying results at different times when testing water for lead, depending on numerous factors including movement in the water and temperature.

A young child swimming for an hour in water and swallowing some of it, with lead content equivalent to that measured by the Journal in May, could add 7.4 micrograms per deciliter of lead to his or her blood, according to Caravanos, using an EPA lead-exposure model to estimate such risks. To help determine whether medical or environmental follow-up are recommended, the Centers for Disease Con-

trol and Prevention uses a level of 3.5 micrograms per deciliter, which is higher than that of 97.5% of young children surveyed nationwide.

Brittany Armas and her three children, ages 2, 8 and 11, have been swimming near the cables in Lake Tahoe for years. Armas, 39, estimates that she swam in the water with the highest lead levels from the Journal's sampling at least 30 times from a young age. She said she's suffered fertility issues and chronic gastrointestinal problems. Though there is no way to directly connect a person's specific health complications with lead exposure, and it is unknown when the Tahoe cable began to leach, these kinds of ailments generally have been associated with lead exposure.

The EPA hasn't gotten involved in the dispute or publicly commented on the removal process. The EPA can compel or undertake a cleanup of major environmental contamination in certain cases. The agency doesn't have a comprehensive program to identify hot spots with lead in soil or surface water, though it does have a program to examine lead in sediment periodically.

NORTHERN EXPOSURE

In Wappingers Falls, N.Y., about 60 miles north of New York City just off the Hudson River, an aerial lead cable hangs above the perimeter of a town playground, with a jungle gym, a swing set and a basketball court.

Near a "CHILDREN AT PLAY" sign, lead in the soil measured more than 1,000 parts per million, according to Caravanos, the NYU professor.

The EPA's recommendations for the levels of lead it believes are generally safe in soil are lower for areas where children play, at 400 parts per million, and higher for other areas, at 1,200 parts per million. (While lead in water is described in parts per billion, lead in soil is described in parts per million, with one part per million equivalent to about one inch in 16 miles.)

Caravanos used an X-ray fluorescence analyzer, or XRF, a device used by scientists to measure elements in soil. At the corner of the playground, the XRF showed lead in soil just under the cable at 850 parts per million.

It doesn't take much lead in soil to elevate a blood level for a child, said Caravanos. "You just need a little dirt on your fingers to put into your mouth and ingest, and you get an elevated blood lead above the CDC level of 3.5."

In West Orange, N.J., a lead-sheathed cable sags over tree-lined sidewalks and driveways for more than one-third of a mile, where children and their parents walk, across the street from Gregory Elementary School. The cable sometimes dips to about 12 feet above the ground.

Caravanos found contaminated soil beneath the cable in multiple spots and registered multiple readings far exceeding the EPA guideline for play areas. Gregory Elementary School is one of 64 schools in New Jersey where the Journal identified aerial lead cables.

MISSISSIPPI BLUES

On the bank of the Mississippi near New Orleans' Bywater neighborhood, tourists recently walked on a bridge with a cable sticking out below. Lead was flaking off into a spot where homeless people have set up camp. Lead in the sediment there was 19.8 times the EPA guideline for where children could congregate.

Atop a levee in Donaldsonville, La., along the Mississippi, families often stroll near two abandoned cables, one smashed on the ground and the other with a splice box, a large lead casing used to connect cables, sealed with molten lead.

A reading by Caravanos using the XRF showed lead in the sediment next to the smashed cable and splice box at 2,850 and 2,880 parts per million, respectively—both seven times the EPA guideline for play areas.

Across the street from the park in a yard strewn with children's toys, an extension of a lead-covered cable and a lead splice box sit in the front of the house of Diane Gros, a 60-year-old mail carrier who has 10 grandchildren. The XRF showed a reading of more than 4,000 parts per million at the site of the cable.

The New Iberia cable on Bayou Teche was laid in 1940 by Southern Bell, which is now part of AT&T, and has an estimated 500 pounds of buried lead to encase telephone wires, based on an assay of a similar cable. The town uses the area near the cable for a gumbo cook-off and an annual canoe race.

A sample of water from the bayou at the cable site showed lead at a level of 7.4 parts per billion. "Kids come down here and play all the time on the edge of the bayou," said Wilma Subra, an environmental consultant in New Iberia who had been unaware of the cable.

FINGERPRINTING LEAD

At selected sites, the Journal took the extra step to confirm that lead stemmed from the cables and not another source. Reporters worked with a researcher to perform an isotopic analysis, a procedure that determines a specific fingerprint for the lead involved. The testing by Bruce Nelson, a geochemistry professor at the University of Washington who specializes in the field, linked the lead found in samples most likely to the specific cables—as opposed to, say, lead from a factory or from paint.

Among those high-lead samples Nelson linked to the cables was one in New Iberia. Assuming the current levels of lead in the sediment, playing at that spot as a child could have raised the lead in the blood of someone like Tyrin Jones, who has fished for years in that spot, to more than eight times the current CDC threshold, according to the EPA model used by Caravanos.

Another lead-sheathed cable juts out of a swampy pond next to Bayou Teche in Franklin. An analysis of the water sample from the pond showed lead at 471 parts per billion. In a nearby backyard of a home owned by Anthony Peck, his 7-year-old granddaughter, Stella Peck, gathers clover flowers to make into bouquets and necklaces.

AT&T didn't respond to requests for comment on the cables in New Iberia and surrounding areas.

At some cable sites, telecom companies disavowed ownership. In Lake Pend Oreille in the Idaho panhandle, a snarl of two lead-covered cables lies abandoned at a spot where children speed by on inner tubes in the summer. The cables sit under a railroad bridge in a prime fishing spot.

A sample of water collected in August at the lake bottom showed lead at 1,250 parts per billion. A water sample taken at the surface in that spot showed lead at 38.8 parts per billion. An isotopic analysis showed that the fingerprint of the lead in the water at the surface matched lead from a telecom cable at that site, and not that of a lakeside slag heap known as Black Rock, the detritus of a lead smelter that had ceased operations by 1913.

A predecessor company to Verizon laid a cable near the site, a U.S. Army Corps record shows. Verizon, Frontier Communications and Ziplly Fiber, telecom companies that have variously served this region over the years, say they don't own the cables.

COAL COUNTRY RISK

In Coal Center, Pa., an aerial lead-sheathed cable runs along the street, drooping so low in certain spots that it is nearly within arm's reach. The roughly mile-long cable, from Verizon, runs into neighboring California, Pa., across an entrance to apartment buildings, and near a school bus stop and playground. Some local residents had known about the cable and had been voicing their concerns for nearly a year.

Lead found at one of the locations measured 7.5 times the amount the EPA says is safe for play areas, according to a soil sample collected by the Journal. The isotopic analysis by Nelson showed the lead in the soil mirrored the lead from the cable and was unlike the background lead in that area.

The lead-sheathed cable runs over the property of Shannon Bibby, 36, mother of the 6-year-old twins. This February, her children played under the cable in the lot next to their house, where ground was being dug up for the foundation of a home. An analysis of soil collected by the Journal from the family's property showed lead at a level more than 40% higher than the recommended level for play areas by the EPA.

A borough council member, Bibby had her children's blood tested after learning about the Journal's finding. Capillary tests, or blood pricks, found lead in one child's blood higher than 3.5 micrograms per deciliter. The other child hit that mark, which is the level at which the CDC recommends seeking medical or environmental follow-up. A subsequent blood test showed non-detectable levels of lead.

It is impossible to say if the twins' initial elevated lead level tests were directly linked to exposure from the cable. The Bibbys' results were below what the EPA model could expect to find in a child playing in soil with the concentrations found at their property, according to Caravanos.

Bibby said she and other Coal Center residents have been pushing Verizon to take the cable down. Verizon has told them it has working services on the old lead cable. In December, she and other Coal Center borough council members discussed their concerns in the tiny borough hall at the edge of the Monongahela River.

"We have to get moving on these cables," said council member Rob Lincavage, who grew up in Coal Center and said it has become one of his goals in life to see the cable removed.

“It shouldn’t be here,” said Bibby. She said the lead should be removed “before something bad happens.”

—*Lisa Schwartz contributed to this article.*

Mr. RYAN. Thank you, Mr. Chair.

Published ultimately saying that AT&T, Verizon, and other major global telecom companies have left behind a sprawling network of cables covered in toxic lead across the entire United States.

In my district, lead has been leaching from these legacy cables, including specifically at a children’s playground in the town of Wappingers Falls, actually not far from Poughkeepsie, and we expect many other parts of the district and the country have been affected by this.

The EPA recommendations for the level of lead it believes are generally safe in soil are about 400 parts per million where children play. The Wall Street Journal independently confirmed that there were 850 parts per million of lead at that playground, more than twice the acceptable amount—even when, of course, we all know that no amount of lead is safe for our kids.

The report goes on. And I am running out of time. But this is a national problem.

So, Ms. Fox, I wanted to ask, the EPA does have the ability to compel or undertake a cleanup of major environmental contamination. Does the EPA plan on compelling cleanup action from these telecom companies for this issue?

Ms. FOX. Thank you for this question.

As you know, the Wall Street Journal article just came out. So, we are looking at the information very carefully and figuring out next steps. And I am happy to follow up with you, Congressman. We are also coordinating with the FCC on this. And so, we are happy to follow up in the coming weeks.

Mr. RYAN. Thank you.

Thank you, Mr. Chair.

Mr. ROUZER. The gentleman yields back.

Mr. Edwards, you are recognized.

Mr. Edwards, pull your microphone to you.

Mr. EDWARDS. Thank you.

Ms. Fox, I am going to describe a situation back in my district. And you might not be familiar with this property specifically, but I think we might be able to apply this to other situations that we see in dealing with brownfields and Superfund sites.

In my district, we have a 525-acre former flax pulp paper mill that was contaminated with mercury and situated in a very rural county in western North Carolina. The county is 50 percent Federal forest and conservation land, and the Ecusta Mill site is the final piece of developable land for an industrial complex in this county. But nobody is willing to develop the property because of its brownfield and Superfund designations.

Now, the mill Superfund site was listed on the National Priorities List from 2007 to 2011. During that time, the EPA partially cleaned the property before having the State take over with a brownfield agreement.

The EPA’s remedial investigation declared the river areas on that property were the only operable unit post-cleanup, but no fur-

ther action was planned, and the site was removed as a National Priorities List.

If the EPA is investing taxpayer dollars into the cleanup of national property sites, why would the EPA not be finishing this job?

Ms. FOX. Thank you for the question, Congressman.

So, the brownfields and Superfund programs at the Environmental Protection Agency are under the Office of Land and Emergency Management. They are not under my authority in the Office of Water. So, I will take that question back to the leadership in the Land and Emergency Management and make sure that we get back to you on that question.

Mr. EDWARDS. What kind of followup, if any, does the EPA do with responsible parties to ensure cleanup of an ex-NPL property that is no longer operable? Do you have any responsibility or interaction with those at all?

Ms. FOX. With? Sorry. I couldn't hear you, sir.

Mr. EDWARDS. Does the EPA have any responsibility at all? Do you interact with those ex-NPL properties in any way? It seems like that would be an EPA issue.

Ms. FOX. Yes. So, again, sir, I want to make sure that we give you the best factual information, so, we will connect you and your team to leadership in the Office of Land and Emergency Management who, as well as our Office of Enforcement and Compliance Assurance, who are the two offices within the EPA that would primarily be dealing with responsible parties and Superfund, brownfield matters.

Mr. EDWARDS. And so, I will follow up lastly with a conceptual question, then, since you are obviously not familiar with this specific site.

If a property is never fully cleaned or made operable, whoever is responsible, isn't it just throwing taxpayer dollars away?

Ms. FOX. So, again, I want to make sure that you have factual information from the EPA. And so, we will connect your team with the Office of Land and Emergency Management to follow up with those very important questions.

Mr. EDWARDS. Thank you.

Mr. Chair, I yield back.

Ms. FOX. Thank you.

Mr. ROUZER. The gentleman yields back.

Mrs. Sykes.

Mrs. SYKES. Thank you, Mr. Chair, and thank you, Ranking Member Napolitano, for convening this hearing today. And I also echo my adoration for the ranking member's leadership in support on water quality issues.

To our witnesses, thank you for your testimony. I definitely appreciate hearing this conversation. I felt a little triggered, if you will, talking about rivers on fire and East Palestine and all that has been happening in Ohio.

And we are certainly in need of your services and are grateful and thankful for the services that you all provide and your attention to the heart of it all in Ohio, and particularly northeast Ohio, which is the heartbeat of the heart of it all, if you will.

I represent Ohio's 13th Congressional District, and our largest city is Akron. It is my hometown. And since 2009, our city had

been operating under a consent decree pursuant to an agreement with the EPA as well as the Department of Justice. And over the past 15 years, our city has poured hundreds of millions of dollars into investments into our clean water infrastructure due to a combined sewer flow that has failed over the years.

We have received significant support from the Clean Water State Revolving Fund for low-interest and no-interest loans. But our residents, and particularly in the city of Akron and those surrounding communities who are serviced, have seen the cost of their sewer bills rise 200, 300, 400, 500 percent because of the lack of affordable financing for this particular project.

And so, the brunt of this lack of clean water infrastructure has been borne by people in my district, in my community, my neighbors, myself, honestly. And it is why this legislation is so important, the Bipartisan Infrastructure Law. And I just want to say thank you and applaud my colleagues who supported it in the last Congress and voted for its passage.

So, getting to the point of water affordability—and, Ms. Fox, this question is directed towards you—many communities are like my district and my hometown who are bearing the brunt of poor water infrastructure, yet we know how important it is to the quality of life, to our health, to our well-being.

Having this very important second hearing about the budget and knowing that many of your products and the programs are under fire if they are not funded fully, what does that mean to you as you are administering these projects, these grants, these loans if we don't fund them fully, and how will constituents like mine continue to be impacted?

Ms. FOX. Well, thank you so much for the question, Congresswoman.

And I just have to begin by thanking you for being such a tremendous partner to the EPA around the situation in East Palestine. You have been just a fierce advocate for your constituents, and the work that the Federal Government has been trying to do—and the State—to try to make progress there for the people is, in very large part, because of your commitment. So, thank you for that.

And thank you for raising this issue of water affordability. The sad reality is that there are too many Akrons around the country. There are many older industrial cities, especially in the Midwest and Northeast, that face these water affordability challenges.

That is why this is not the time to cut our budget for water infrastructure, because that will only make it harder for communities like Akron to find affordable funding and financing programs.

So, it would lead to greater rates. It would lead, frankly, to challenges for States, Tribes, Territories, and local governments, because 85 percent of the EPA's budget goes to States, Tribes, Territories, and local governments. It is not our budget. It is the people's budget, truly.

And on Akron, one thing that we would be pleased to do is, in the Office of Water, we have a water infrastructure center, a financing center, and what that center does is work with communities like Akron to make sure that they are aware of and fully ac-

cessing the range of funding and financing programs that we have at EPA, but that also other agencies have to support investment.

And so, Congresswoman, we would be happy—I understand that there is a new mayor in Akron—and so, we would be happy to follow up with the mayor and with your office to make sure that they are plugged into all of these opportunities.

Mrs. SYKES. Thank you.

And really quickly before my time expires, Dr. Bernstein, I do want to recognize and thank your department for coming into East Palestine so quickly and acknowledging the threat that so many people had and so many concerns that people have.

I don't represent East Palestine, but, as we know, water knows no jurisdictional boundaries. And knowing that we had a good partner in the Federal Government onsite very quickly, answering questions, thinking of the children's health, that was the one question that we heard over and over.

Again, just want to say thank you and applaud you for the work that you do on behalf of Ohio's 13th Congressional District in northeast Ohio.

Dr. BERNSTEIN. Yes, ma'am.

Mrs. SYKES. Thank you, Mr. Chairman, and I yield back.

Mr. ROUZER. The gentlelady yields back.

Mr. James.

Mr. JAMES. Thank you, Mr. Chairman.

And thank you for all the witnesses for being here today. Your direct engagement and passion for clean water is critical for everyone in the United States of America and around the world as we set the example for how we must live.

Really quickly, is anyone on the panel familiar with BioCon™ ERS? OK.

As I toured my district and I learned more about the technologies associated with making sure we have clean water, this is one particular technology that I was educated about. This is intended to get rid of PFAS in a manner that would completely, over time, extract this dangerous forever chemical from our drinking water eventually.

I will follow up with you, Madam Administrator, on any technologies that you are working for in that regard.

But, as a followup question, can you give us an update on the PFAS Strategic Roadmap?

Ms. FOX. Absolutely. Thank you, Congressman.

And I look forward to learning more about this technology, because if we are going to successfully tackle PFAS pollution in our air, land, and water, we are going to not only need to build a scientific foundation and strengthen the regulatory foundation and fund PFAS remediation, like we are doing through the Bipartisan Infrastructure Law, but we are going to need technology solutions and innovation in order to address it. So, I look forward to learning more.

As far as the PFAS Strategic Roadmap, under Administrator Regan's leadership, the EPA produced our first-ever strategic roadmap that was really looking across all of our authorities as an agency to tackle this issue, and I cochair the PFAS Council that guides that roadmap.

I have to say, the career leadership across all of our headquarters and regional staff have been doing a phenomenal job delivering on each of the commitments in the roadmap. We are on track, on pace with many of those commitments.

In my office, the Office of Water, a signature action that we are moving forward is establishing the first-ever drinking water standard for PFAS. We proposed that rule this spring. Public comment just closed a week or so ago, and we are working quickly to finalize that rule by the end of the year.

So, we are working hard on this issue. We know that people all around the country are concerned about PFAS in their water, in the land that their children play on, in the air, and we are tackling it head on.

Mr. JAMES. Perfect.

Another, storm sewer separation, combined sewer overflows, a big deal in my district, Michigan's 10th Congressional District, right on Lake St. Clair. And as you well know, not just in the Detroit area, but in areas all across the country, particularly older industrial cities, this is a really big problem, particularly with flooding.

What is the administration doing, particularly in socioeconomically depressed areas and areas particularly in industrial America, that may not have that separation? Are there investments being made for that storm sewer separation, remediating combined sewer overflows? And can you explain a little bit more about that?

Ms. FOX. Yes. Thank you for the question.

And here is a fun fact. Most combined sewer systems, like in your district, they tend to be, as you said, in older industrial areas, the Northeast, Midwest.

I started my water career at the San Francisco water agency, and, strangely enough, we had a combined sewer system there, which is not typical in the West. So, I really understand firsthand what the challenges of the combined systems can be, especially when we have extreme rain events.

There are a range of resources that can be utilized to address this. So, for example, all of the money that is in the Clean Water State Revolving Loan Fund program, that can be utilized, for example, to separate systems. And that is often a solution.

There are other ways that we can shore up the infrastructure to deal with the flooding that occurs with these systems. So, I would be happy—

Mr. JAMES [interrupting]. I apologize for cutting you off, but I would like to discuss those.

Ms. FOX. Absolutely.

Mr. JAMES. I would like to personally invite you to my district, the 10th Congressional District of Michigan, this year to take a look at some of the innovative things that we have going on, and hopefully to gain the administration's support for further investment in keeping our water clean in the Great Lakes.

Thank you.

Ms. FOX. It would be my honor to join you.

Mr. JAMES. Perfect. Thank you.

Ms. FOX. Thank you.

Mr. JAMES. Mr. Chairman, I yield.

Mr. ROUZER. Ms. Wilson, you are recognized.

Ms. WILSON OF FLORIDA. Thank you so much, Chair Rouzer and Ranking Member Napolitano, for today's hearing to discuss the necessary investments in our water infrastructure.

We must make conscious decisions to invest Federal dollars where they are most crucial and beneficial. My congressional district, Congressional District 24, is in urgent need of major water resources investments in Miami-Dade County, Florida. The Biscayne Bay, located in the heart of my district, needs funding for conservation and restoration, as it suffers from propeller scars causing sediment erosion and water quality issues affecting the ecosystem's overall health.

Every day we fail to address these issues, south Florida's drinking water will continue to be contaminated, resulting in dire consequences for the health and well-being of our residents. So, we are in a race against time to safeguard our public health. Miami-Dade County's wastewater infrastructure needs \$4 billion as we transition from septic to sewer.

Additionally, restoring the natural flow in the Everglades is crucial for protecting our communities from hurricanes and floods, as well as providing clean drinking water to over 8 million Floridians. This requires continued investment and our focused attention.

So, in south Florida, an investment in water infrastructure means an investment in our public health, ecosystem, and economy.

With that, I have a few questions.

Ms. Fox, in south Florida, we are witnessing alarming changes and challenges, such as habitat loss, severe beach erosion, and fish kills directly related to climate change and pollution.

Can you discuss how programs like the EPA's geographic programs address erosion and loss in coastal communities?

Ms. FOX. Thank you for the question, Congresswoman.

And you are absolutely right. The EPA has several geographic programs, place-based programs, the National Estuary Program, and these have for a long time been essential tools for achieving water quality improvements.

And many of these geographic programs focus on, as you said, erosion and biodiversity, including the South Florida Geographic Program, as well as the Gulf of Mexico program. And the fiscal year 2024 budget calls for about \$35 million for those programs.

Some of the things that are happening right now which are so exciting around these issues of erosion and loss in biodiversity: We are supporting critical research on coral reefs and coral biodiversity. We are looking for ways to address nutrient pollution in those areas of the country which can lead to a lot of the loss in biodiversity.

So, I would be happy to follow up with you and your office. I have to say our EPA staff in region 4, this is some of their proudest work that they are doing. They are making great progress. And I think with the fiscal year 2024 budget, we can continue that work.

Ms. WILSON OF FLORIDA. OK. Very quickly, based on your understanding of grants provided directly to States, could there be improved outcomes if the grants were given directly to municipalities?

Ms. FOX. So, one of the things that has made the Clean Water Act so successful, as well as the funding programs like the State Revolving Loan Fund program, is the partnership between EPA and the States in delivering these resources.

We have been working very closely with all of the States in making sure that these resources are reaching all communities. Forty-nine percent of the resources provided through the Bipartisan Infrastructure Law must go out as grants and principal forgiveness to disadvantaged communities. So, we are really working closely with States to make sure that every community that needs it is accessing those dollars.

And so, we are very confident that we can continue to make progress by partnering with the States in this endeavor.

Ms. WILSON OF FLORIDA. OK.

Dr. Bernstein, Turkey Point Nuclear Plant, located on the coast of Biscayne Bay, has been operating for over 50 years and raises concern due to its proximity to our delicate ecosystem.

In the face of aging infrastructure and a constant threat of an unpredictable climate, what measures is your organization implementing to prepare for a nuclear catastrophe?

Dr. BERNSTEIN. Thank you, Congresswoman, for that question.

So, as a part of my responsibilities at CDC, I also oversee the National Center for Environmental Health, which is a separate agency from ATSDR, which I am here for appropriations.

Within NCEH, there is a program focused on nuclear radiation risk, which works essentially as the public health backbone of any nuclear concern.

So, the actions we take are in response to community engagement. So, we proactively—we will work with communities of interest. I don't know off the top of my head if we have directly engaged around the Turkey Hill plant. And I have been in this job 5 weeks, so, I don't know everything I need to know yet. But I would be happy to go back and look into that for you.

Ms. WILSON OF FLORIDA. Thank you.

I yield back.

Mr. ROUZER. Mr. Ezell.

Mr. EZELL. Thank you, Mr. Chairman.

Administrator Fox, I want to thank you for coming to my State of Mississippi last year, Jackson, our capital. We had a water crisis there, and it is still somewhat ongoing.

The response from the Mississippi Rural Water Association and other State association member utilities played an instrumental role in restoring these important services.

As you are aware, the State of Mississippi has received millions of dollars to improve its critical water system. However, much of the funding is set to expire in 2026.

As I speak about the system operators in my State, I hear about ongoing supply chain issues and a limited number of contractors available to complete these projects. According to the members, if a contract were signed today, it could be 18 months before work would even get started on these critical repairs on our water infrastructure.

How can Congress work with the EPA to ensure rural and low-income States like Mississippi can effectively use Federal funds provided to make these important critical water improvements?

Ms. FOX. Thank you for the question, Congressman. And thank you for mentioning the Mississippi Rural Water Association.

Mr. EZELL. Yes.

Ms. FOX. When the Jackson water crisis was happening, the Administrator and I traveled down there four times. And to see Mississippi Rural Water at work, just the fellowship, the sense of a local system needed help, we are going to be there, it was truly inspiring. I got to be with them at the incident command and just saw firsthand the generosity and spirit and contribution that they made.

And thank you for the question, too, because one of the things that I learned when the Bipartisan Infrastructure Law passed is that only 10 percent of water systems around the country have successfully accessed the State Revolving Loan Fund program, which has been around in decades.

And that number, it is not acceptable. This is a program that has got to work for every community. And as I have traveled all around the country to rural communities, there are significant technical, financial, and capacity challenges that these communities face. And we need to take care of that so that they too can benefit from these resources.

So, over the last year and a half or so, the Office of Water has set up a technical assistance infrastructure to do that very thing. We have actually a website, WaterTA, so, any community can access planning support, design and engineering support, support with grant writing, so that they can access these funds.

We also continue and have actually increased our technical assistance funding to both National Rural Water as well as the Rural Community Assistance Program, because they are oftentimes on the front lines with these rural water systems. And so, they have gotten a significant increase in support from the EPA so that they can continue to work with rural America.

Mr. EZELL. Thank you.

Does your agency take into consideration the resources available in rural and disadvantaged communities when placing timelines on the use of these Federal funds?

Ms. FOX. I am sorry, sir. Could you say that again? I couldn't quite hear you.

Mr. EZELL. OK. Does the Agency take into consideration the resources available in rural and disadvantaged communities when placing timelines for the use of the Federal funds?

Ms. FOX. Yes, we do, sir. And many of the timelines that we have around distributing our funding through the Bipartisan Infrastructure Law, that was really set by Congress when they passed it. Other funds that we have available are more flexible as far as how quickly they have to be spent.

But we absolutely work with disadvantaged communities and rural water systems to meet them where they are. We try to be flexible.

We also work with the States, who are often who we give resources to, that then provide assistance agreements to local water systems.

So, that is absolutely a consideration.

Mr. EZELL. Let's really try to get that on the high-priority list, because that has been a problem for years in Jackson. It is not in my district, but it is my State. And they really need some help up there. So, if you could get that going a little bit, we would certainly appreciate it.

Ms. FOX. Will do. Thank you.

Mr. EZELL. Thank you, Mr. Chairman. I yield back.

Mr. ROUZER. Mr. Stanton.

Mr. STANTON. Thank you very much, Mr. Chairman.

Arizona is ground zero to witness the impact of climate change in our country, in many ways, our planet. More expansive and intense wildfires, and if you are paying attention to the news, Phoenix broke a record yet again for the most days under an excessive heat warning. My hometown is now approaching its 14th consecutive day with temperatures at 110 degrees or above.

But none are perhaps more consequential than the prolonged mega-drought in the Southwest that is straining our most precious resource, water.

In the desert, we have always had to be smart about how we use our water, but it has become even more urgent and more challenging with the impacts of climate change.

It is a new reality for the American Southwest, and we need to be smart and proactive about how we use and save both surface and groundwater in a hotter, drier future.

That is why I have made it one of my top priorities in Congress to tackle these challenges head on and to work with community leaders and our Federal partners to develop creative solutions. I am proud that Arizona already leads the way, and in so many ways, in sound water policy and stewardship.

In Phoenix, efforts are underway to build a multibillion-dollar advanced water purification facility to recycle wastewater into drinking water by the end of 2030, providing a resilient and drought-proof water supply for not only Phoenix residents, but surrounding communities, as well.

With continued cuts to our share of the Colorado River water, this project has the potential to replace half of what Phoenix receives from the Colorado River each year. That is significant.

Administrator Fox, I appreciated our discussion about this project recently and the ongoing impacts of climate change on our water resources. This innovative project is an important investment that we have to make and one that the Federal Government should actively partner with us on.

How can the EPA support Phoenix's effort on this critical project?

Ms. FOX. Thank you for the question.

And, Congressman, I have to say congratulations, because it has been a few years since I have seen you, and the last time we were together in person you were the mayor of Phoenix. So, it is wonderful to see you again.

And please know that the EPA is committed to working with Phoenix. It sounds like a very exciting project that you described and just the kind of project that we need in the Western States.

I would be happy to follow up with your team and with the city of Phoenix about the project. I think there is a range of funding.

One of the things that we have been trying to do at EPA to help address the Colorado River Basin challenges is, how do we prioritize water infrastructure projects that actually get to water supply diversification, water reuse, and fundamentally helping communities like Phoenix reduce their long-term reliance on the Colorado River, as this project seeks to do.

Mr. STANTON. That is great.

Ms. FOX. I recently got information from my team that about \$2 billion of the funding that we have put out over the last several years through the SRF and the WIFIA program are funding these types of projects all along the basin.

Mr. STANTON. That is great.

Ms. FOX. So, we would be happy to follow up with Phoenix and think about what is the right package of tools that we have, financing tools that we have to help try to move it forward.

Mr. STANTON. We look forward to working with you. Thank you for your leadership, and I look forward to working with you.

Commissioner Giner, thank you for your work and that of the Commission in addressing the challenges of the ongoing drought in the Colorado River Basin.

Mexico has been a key partner on the Colorado River in recent years and has contributed in the same way as other basin States in reducing water consumption.

Last year, Mexico's allocation of Colorado River water was reduced 5 percent. And this year, as the drought has persisted, it was reduced 7 percent.

These cuts, combined with significant cuts taken by Arizona, have been helpful, but they will not be able to reverse the devastating impacts of the ongoing 23-year drought, a drought that threatens the entire Colorado River system and all who rely on it. We all have an interest in protecting the system from collapse.

Recently, the lower basin States reached an agreement to conserve an additional 3 million acre-feet of water, but we can't do it alone. This crisis needs an all-hands-on-deck approach from all basin users, including Mexico.

Can you provide an update on discussions with Mexico and a timeline for potential agreement on additional water conservation?

Ms. GINER. Yes. Thank you for the opportunity to answer this question.

Yes, we have been working very hard with Mexico on them taking their proportionate share of cuts related to water deliveries, 1.5 million acre-feet is delivered to Mexico yearly. You are correct, they are taking a cut right now, 7 percent. And we have met with very high levels within the Mexican Government, and they are committed to do their proportionate share of cuts with deliveries as well.

Mr. STANTON. OK. Good.

Ms. GINER. We intend to have a Minute in place in time for the record of decision that will be issued by the Bureau of Reclamation.

Mr. STANTON. Thank you very much.

Ms. GINER. So, that will be, like, in January.

Mr. STANTON. And let us know how Congress can support you in that incredibly important effort.

Ms. GINER. Thank you.

Mr. STANTON. Thank you. I yield back.

Mr. ROUZER. Mr. LaMalfa.

Mr. LAMALFA. Oh, so I'm next, next. All right. Thank you.

First, I want to say to our colleague, Mrs. Napolitano, it is a real pleasure—and I know we still have a year and a half to go, and that is good—but it is a real pleasure to work with you and serve with you. And your parents named you aptly, your first name, in working with you, ma'am. Thank you. God bless you.

Administrator Fox, good to see you. I had a chance to speak with you a little bit earlier. This will be directed in your direction here.

Earlier this year, we introduced a bill, H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act. It is keyed on fire retardant, the pinkish-red stuff we dump out of airplanes and helicopters big time. And, of course, it is extremely important in fire suppression all over the West, all the over the country, as we have more and more large, large fires.

I just came from a conference meeting about that, talking about California wildfires, my bipartisan colleagues there.

And so, indeed, fire suppression is one of the main missions of the Forest Service as well as our local CDF/CAL FIRE, in my home State, and in every other jurisdiction that is next to a forest.

So, the retardant has worked extremely well. It has been modified over the years. It is very environmentally friendly, and certainly they are conscientious about how it is used.

As you know, it is required in it being dropped on the fires that there is a 300-foot buffer away from any kind of a stream or river or body of water. And so, when you have got the large aircraft, the DC-10s, the 747s, or the next size down, generally, there is a pilot plane that is guiding that large aircraft to where the drop is.

And they do a remarkably good job of getting it where it needs to be. It really hasn't been a problem. We don't have a record of incidents of it harming waterways or environmental issues.

So, what we are wondering is that why is it that, at this point—the Forest Service, again, has been fighting fires since 1905 and using aircraft for suppression since sometime in the 1950s—why do we need, all of a sudden, a permit to use this well-known material? Because that is currently underway, and we—well, I will let you answer the question.

Ms. FOX. Yes. Well, thank you for the question, Congressman.

And as you know, I too, am from California, and we live with the threat of wildfires all across the West. And EPA is committed to ensuring that firefighters have all of the necessary tools at their disposal to safely protect communities while also upholding their responsibilities under the Clean Water Act.

So, we have in place a compliance agreement with the Forest Service that allows the Forest Service to continue all firefighting activities, and we are also working towards a longer term permit.

So, the Forest Service and the EPA are in agreement—

Mr. LAMALFA [interrupting]. And we are thankful for that, because there was a lawsuit brought by an outside group to, incredibly, sue to stop the usage of it.

Ms. FOX. Yes. So, that court—I am happy to give you an update on that.

So, the U.S. District Court for the District of Montana that is presiding over this case, they acknowledged that a permanent injunction is not needed because we have this compliance agreement in place, we have this permit.

So, the Forest Service, the EPA, we are moving forward. They have all of the tools they need to be able to fight fires, and we have addressed this litigation issue in Montana.

Mr. LAMALFA. How long do you think it will take to process the permit that, inevitably, I hope, will be issued in order to—

Ms. FOX [interrupting]. So, it is a top priority for us and for the fire service to get that done expeditiously. Sir, I don't have the immediate timeframe in front of me right now.

Mr. LAMALFA. The estimate I hear is 2 to 3 years. Do you think we can streamline that?

Ms. FOX. I would anticipate it is on the lower end of that number. But let me make sure that we are providing you with accurate information.

But what I do want to just underscore is that, with this compliance agreement in place, the Forest Service can undertake all fire-fighting activities. There are no concerns at all about that.

Mr. LAMALFA. You don't see any difference in their ability to fight fire this year versus previous years under that compliance?

Ms. FOX. I am sorry, sir. I couldn't hear you.

Mr. LAMALFA. OK. You don't see any difference in their ability to fight fire this year versus previous years?

Ms. FOX. No. They are able to undertake all the tools. That is all covered in the compliance agreement that is in place.

Mr. LAMALFA. OK. The States will probably have to—many of them will have to go through a permit process as well. I hope they can be timely.

Lastly, are you actually aware of issues that have popped up on retardant getting in and causing an environmental issue in our waterways? Do you have a list or such of anecdotes, or are you aware of any? Are you aware of them?

Ms. FOX. I would like for my technical team that focuses on that to get back to your office on that.

Mr. LAMALFA. OK. We would love to have a list and see how often it actually may have occurred. Now, there might be an accidental drop here and there.

But, anyway, with that, I need to yield back. Mr. Chairman, thank you.

Mr. ROUZER. Mr. Carter, you are recognized.

Mr. CARTER OF LOUISIANA. Mr. Chairman and Ranking Member, thank you for the opportunity.

Ms. FOX, you mentioned the passage of IJJA and IRA as being instrumental to achieving clean and safe water. Can you share with us how the \$13 billion investment into the Clean Water State Revolving Fund will help achieve that goal?

Ms. FOX. Well, thank you for the question.

And I have to say, Congressman, it has been a very productive partnership between EPA and the States in getting these resources out. In the first year of implementing the Bipartisan Infrastructure Law, we have put forward about \$5.2 billion from EPA to States, and now States are funding local water projects all across the country. We think that there are over 1,400 assistance agreements that are in place.

So, the vision that Congress had in passing the Bipartisan Infrastructure Law to help provide clean and safe water, we are able to deliver this for the American people.

What is so wonderful about the Clean Water SRF program is that there are many uses, that States can work with their local communities and make sure that whatever project in need there is, that that can be funded.

So, it is funding flood mitigation projects. It is supporting issues around combined sewer systems, which we were talking about earlier. It is investing in wastewater utilities to upgrade their infrastructure so they are discharging safely into the environment. It is funding work around PFAS and making sure that we are addressing that.

Mr. CARTER OF LOUISIANA. Can I get you to drill down a little bit in the area of Black and Brown communities that have historically suffered from poor water quality? And what efforts specifically can we expect to see as these issues crop themselves up, unfortunately, in areas of underserved communities probably disproportionately more than anywhere else?

Ms. FOX. That is correct. Low-income communities, communities of color, are disproportionately impacted by water challenges. So, we are doing a couple of things.

I mean, one is that when Congress designed the Bipartisan Infrastructure Law, they did something different than our usual appropriations to the SRFs. They required that 49 percent of those resources must go to disadvantaged communities, and it has to go out as grants or principal forgiveness, because they have financially related challenges.

So, we have been working with the States and helping them to identify disadvantaged communities. We now have this technical assistance program that any community can access to help them navigate getting these Federal dollars.

Mr. CARTER OF LOUISIANA. And it is going to sound like I am cutting you off. Please forgive me.

Ms. FOX. No, no. It is OK.

Mr. CARTER OF LOUISIANA. We have got limited time, so, I just want to kind of jump in on a couple of points, one of which is, you mentioned these resources.

In a lot of the small parishes—parishes in Louisiana; counties in other places—we have smaller communities that don't have access to consultants, accountants, and programs to access these grants.

What are you guys doing in the area of making it plain and reachable and accessible for smaller urban areas?

Ms. FOX. Yes. Well, so—

Mr. CARTER OF LOUISIANA [interrupting]. And rural areas.

Ms. FOX. Yes. And I am putting a call out to all of the Members here that our WaterTA program is available to anyone.

So, Congressman, I would be happy to have my team reach out to those parishes, make sure that they know that we have this technical assistance. They have access to engineers, planners, grant writers to be able to get these funds. We are making that available.

Mr. CARTER OF LOUISIANA. I will absolutely take you up on that.

Ms. FOX. Absolutely.

Mr. CARTER OF LOUISIANA. I mean, because we have a very robust outreach program in Louisiana's Second Congressional District where we take our efforts to the community to make sure that those things that have once seemed to be challenging or far away, we bring it close to the people so they have an opportunity to see Government at work, but more importantly, access resources that can assist.

Real quickly, Mr. Aspey, one of your areas of focus is conservation programs under the farm bill. There are many programs in particular that are looking toward Congress, looking ahead of the farm bill for authorization.

One of the issues that is critically important in my district in Louisiana is the massive issue in my district, which is flooding. What can Gulf South do to help mitigate the risk of increased flood insurance premiums?

NFIP Risk Rating 2.0 has been devastating to our communities. Can you share with us any hope that you may have on some relief in the area of flood mitigation?

Mr. ASPEY. Congressman, thank you for the question.

NRCS could assist with that indirectly for the flood insurance premiums through construction of flood control measures. If folks are not directly impacted by the flooding, then their flood insurance rates would go down.

But we would provide the structural opportunities there to help address that on the front end so that there would be a level of certainty. We would be very happy to work with you and your team in Louisiana on that and talk about options and see what solutions we can come up with.

Mr. CARTER OF LOUISIANA. Thank you very much.

My time has expired. I yield back.

Mr. ROUZER. I might just make a plug for NRCS. It has been a great agency to work with as it relates to flood mitigation and snag and drag and all those good things. So, I appreciate the work.

Mr. Duarte.

Mr. DUARTE. Thank you, Mr. Chairman. Thank you.

All of our participants today, thank you for your testimony.

Ms. Fox, thank you for being here.

I want to make a few comments on the Army Corps of Engineers and then move on. I don't expect you to have all the answers, but I really, really would like you to know some of the just unacceptable performance level of the Army Corps of Engineers in my district in permitting water quality and water flood control projects.

In Merced County, we had McSwain Creek overflow, flood out twice in 5 years, flood out the same grammar school, flood out the same neighborhoods.

It is a farmworker community primarily. It is definitely a disadvantaged community. It is definitely a Brown community, if we care that, Black, Brown, or whatever they are. Twice in 5 years,

all the while undergoing a permitting process for the Army Corps of Engineers and Fish and Wildlife to repair the same levee on the same creek that broke twice. That was unacceptable.

Now, in the same county, there was another flood down there this year at Black Rascal Creek that flooded out the town and grammar school in McSwain, as well as several farms. We actually brought in Chinook helicopters from the Army Reserve to drop riprap in the break of the levee and see if we can get it repaired.

Now they are going through a permitting process for the Army Corps that was begun in 2000. In 2022, they were told to go back and redesign it based on some new standards. They are now 3 years into redesign trying to repair these critical levees where they are very, very concerned about breaks flooding out their communities.

Fish and Wildlife, Army Corps of Engineers, they can't get these projects done even within the scope of 5 years. So, whatever the local authorities, whatever the local decisionmaking you believe the Army Corps to have, and however effective you may believe that is, I would encourage you to investigate it.

And if you need any more information on these issues, please contact my office. I would be glad to put you in touch with the local electeds down there who would be glad to give you a tour on the ground.

On a greater issue that I would like more feedback from you on, the San Joaquin Delta sits just east of San Francisco. It is a critical water resource, critical water conveyance point, and a critical habitat preserve.

Over decades, we have had cities surrounding the San Joaquin Delta with effluent discharges, nontertiary treated, and sewage discharges into the delta.

We have had Sacramento municipal waste, saw the waste, documented as to having discharges into the delta. They caused algal bloom and caused all kind of habitat and marine life destruction.

But we see all the money. We see the Clean Water Act, block grants to California, from \$200 to \$300 million a year. We see the money you request on the Infrastructure Investment and Jobs Act. We hope—I hope—that some of these municipal waste discharges are receiving fines and penalties for discharge and unmanaged sewage flow into the delta.

And then we are flushing trillions of gallons of water into the delta each year from our precious water resources to get the delta water back up to drinking water quality standards.

Will you please commit to report back to me and to Chairman Rouzer here what have the efforts been specifically in the San Joaquin Delta and its surrounding municipalities to follow up on discharges, detect discharges, remedy discharges, and use some of whatever resources we have used over the billions and billions that have been put through the EPA for these clean water funds over the last two decades to minimize these discharges into the San Joaquin Delta and improve these matters?

Ms. FOX. Yes. I would be happy to follow up with your office on that.

Mr. DUARTE. Thank you.

No further questions, Mr. Chairman. I yield back.

Mr. ROUZER. The gentleman yields back.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

Assistant Administrator Fox, the District of Columbia operates as the functional equivalent of a State, county, and city, and DC residents pay full Federal taxes. Indeed, DC pays more Federal taxes than 19 States and more per capita in Federal taxes than any State.

On multiple occasions in the last couple of years, the EPA has denied DC equal Federal funding, including in the Solid Waste Infrastructure for Recycling and Climate Pollution Reduction Grant programs.

While it has treated DC as a State, it has not treated it as a municipality in the Solid Waste Infrastructure for Recycling program and required DC to share its State funding with the DC metro area in the Climate Pollution Reduction Grant program.

My question is, why has EPA denied DC equal Federal funding?

Ms. FOX. Well, thank you for the question, Congresswoman, and it is good to see you again.

Having moved from California for this job about 2½ years ago, I definitely see the challenges that the District faces with its unique governance structure, governmental structure.

The program that you are referring to is in our Office of Land and Emergency Management, so, I would like to take your question back to that office and make sure that we get you an answer.

The one thing I would say is that, as far as the water program at EPA, we have a very strong partnership with DC. For example, Administrator Regan's first WIFIA announcement when he became the Administrator was the \$156 million WIFIA loan to DC. And so, that has been a big success story as far as the partnership between EPA and the District of Columbia, as well as with the Bipartisan Infrastructure Law, about \$130 million in dedicated funding to the District.

And I was recently talking with the leadership at DC Water, and what they said is that, because of this dedicated funding for the District, you get your own allocation. They are going to be able to shave years off of their goal of a lead-free DC.

So, on the water side, we are going to continue to partner with the District and make sure that District residents are getting these resources.

Ms. NORTON. Well, I appreciate then your getting back to me as well on the earlier part of my question.

Will the EPA commit to treating DC as a State, county, and city in Federal grant programs unless a Federal law expressly precludes such treatment?

Ms. FOX. So, on that question, Congresswoman, I can speak to the water programs. And all of the formula funding that we get, the District of Columbia has a set-aside of those resources. And we work—

Ms. NORTON [interrupting]. Has a what?

Ms. FOX. Has a set-aside. So, for example, with the State Revolving Loan Funds on the drinking water side, the clean water side, there is an allocation, an allotment that the District of Columbia gets that is separate and unique from the allotments that the other

States get. And we work very closely with DC in getting those funds quickly and getting those invested.

Ms. NORTON. So, you will treat DC as a State for these programs?

Ms. FOX. As far as within the Office of Water, we work in making sure that the funds that are allocated to the District of Columbia are getting to the District of Columbia quickly to invest in water infrastructure.

Ms. NORTON. OK. I yield back.

Mr. ROUZER. The gentlelady yields back.

Mr. Burlison.

Ms. BURLISON. Thank you, Mr. Chair.

Chairman, I appreciate you holding this hearing. It is important. This topic is extremely important to my constituents.

And so, Ms. Fox, my first questions go towards you.

Given the uncertainty that a lot of farmers or people within industry, infrastructure, manufacturing, that they have regarding EPA rules on WOTUS, do you think that, given all that uncertainty, that it's acceptable for those businesses to simply wait while the EPA moves at its own pace for a new definition of WOTUS after the post-*Sackett*, especially when these delays can put some projects back a year or more?

What are your thoughts on that?

Ms. FOX. Thank you for the question.

So, the truth is that the Nation has lived with uncertainty around waters of the United States for over a decade. Multiple administrations, multiple courts have addressed this issue.

When I joined the EPA, I committed to working hard to provide regulatory certainty as it relates to waters of the United States to stop the ping-pong. We—

Ms. BURLISON [interrupting]. So, with that being said, the Supreme Court gave clear certainty.

Ms. FOX. And that is why we are working rapidly to put a final rule in place by September 1st. What that rule will do—

Ms. BURLISON [interrupting]. Will your rule underline, will it underscore what the Supreme Court decision was?

Ms. FOX. It will follow—the EPA and Army Corps are committed to following the law. So, the rule that we are developing right now and that will be final by September 1st, will be in absolute alignment with the direction provided by the *Sackett* decision.

We are doing that quickly because we share your goal, sir, of providing certainty to all who have a stake in our Nation's water future.

Ms. BURLISON. Thank you. That is good to hear. That sounds promising, because one of the criticisms that I hear back in the district is that they feel like it is confusing. They are worried what might end up falling into WOTUS and what isn't.

My other question has to do with ponds. Mr. Aspey, you might be the one that answers this question.

When it comes to cattlemen, farmers, a lot of—I think there is a program through, is it your agency or the USDA that helps farmers establish water, basically resources, and ponds so that they can—enough to rely on access, immediate access to water for their cattle?

Mr. ASPEY. Yes, Congressman. Thank you very much for the question.

The short answer to that is, yes, NRCS has a suite of farm bill programs. And we are designed to work individually with landowners, walk their operation with them, determine what their resource concerns are, what their needs are, and then match up those concerns with the appropriate program. So, water supply and ponds is one of the practices that we do employ.

Ms. BURLISON. Now, one of the questions that I had is that—and I think it is smart because you are creating resiliency within—for water. You are establishing places, storage for water where they can at least store it for whenever there are times of rain and then it is available when there are times of drought. It makes sense.

The question is, over time, a lot of those ponds end up filling in, and so, then the question is: Is your program available to them whenever they want to restore those ponds, or try to maybe grow or increase the size of them?

Mr. ASPEY. Sedimentation is an issue whenever you have an artificial body of water for sure. Each one of these practices does have a lifespan. So, we would be able to work with the individual producer to, again, see that what their resource concerns are, if there is repair needed on that structure, or if it has exceeded its lifespan, perhaps to create a new structure or dredge out the existing one.

Ms. BURLISON. So, that is available.

Mr. ASPEY. Yes.

Ms. BURLISON. Today.

Mr. ASPEY. Yes. And I would encourage—locally you can either work with me directly, your constituents, or through our State conservationist and their local team to address that.

Ms. BURLISON. OK. Well, that clears up some confusion because I just had a visit from farmers in my community that that was their concern, that it's not available to existing ponds.

Thank you.

I yield back.

Mr. ROUZER. The gentleman yields back.

Mrs. González-Colón.

Mrs. GONZÁLEZ-COLÓN. Thank you, Mr. Chairman.

Thank you all for being here.

Ms. Radhika Fox, on Tuesday, the EPA announced in the Federal Register a settlement modification to a 2016 consent decree with Puerto Rico Aqueduct and Sewer Authority, requiring setting a timeline to make major improvements and upgrades to the island's sanitary collection system and wastewater treatment plants. These upgrades would allow the water utility to focus on resources to reduce the number of better operated and more efficient facilities.

But those need to meet certain revised schedules for specific wastewater infrastructure projects and execute 17 new wastewater projects, which, on their own, are estimated at \$534 million. PRASA has also agreed to increase transparency with the public regarding the occurrence of combined sewer overflows.

My question will be: Who identified what the priority projects will be and based on what criteria?

Ms. FOX. Thank you for the question, Congresswoman.

So, you are referring to an enforcement matter, and so, I have to refer that to our Office of Enforcement and Compliance Assurance.

But what I can say, though, is this is an EPA that is very committed to making progress on water issues in Puerto Rico.

Mrs. GONZÁLEZ-COLÓN. You will get back to me with that information.

Ms. FOX. Yes, I will, absolutely.

Mrs. GONZÁLEZ-COLÓN. The next question in that same line will be: What are the mechanisms going to be that will be put in place to oversee and ensure that the improvements are completed within the timeframe detailed in the full settlement document?

And the reason for my question is, we suffered Hurricane Maria in 2017, earthquakes, and Hurricane Fiona. And we still have a lot of Federal funds that are not being used, and I don't want this to be combined with all those Federal moneys, or, if they are combined, to make some improvement in those plans.

So, in that sense, that is the reason they need to meet with a timeframe. When are those going to be completed? Who is going to be doing the oversight on that? Because people on the island are just saying, we do have the money, Federal money has been approved, but nothing has been seen. Nothing has been constructed. So, I do have that concern.

The other one was if there were any discussions with the Government of Puerto Rico on this settlement.

My next question to you will be that I know that EPA intends to file ministerial edits to the 2023 revised definition of waters of the United States rule and issue a final rule by September the 1st of this year.

Without official stakeholders' input, my question will be: What actions will EPA take if the agencies receive an adverse comment post-September the 1st?

Ms. FOX. OK. Well, thank you for that question. So, what EPA and Army are doing as it relates to waters of the United States is something called a good cause final rule. A good cause final rule is something that is allowed under the Administrative Procedure Act under certain conditions.

And so, we are in a situation right now where, because of the *Sackett* decision, we have a regulatory regime around waters of the United States that does not comport with that.

So, we have no policy discretion as agencies right now in this rulemaking. We are simply amending the rule so that it is consistent with the *Sackett* case, and that is why we are not taking public comment per the Administrative Procedure Act.

We think that by having this final rule in place by September 1st that is consistent with the law, that that will provide great clarity to the regulated community.

Mrs. GONZÁLEZ-COLÓN. But what happens—

Ms. FOX [interrupting]. Now, Congresswoman, if there are questions that remain for the regulated community after that final rule, we are going to be holding implementation discussions.

If there are ongoing questions that remain, we will address them. We are absolutely committed to that. From the beginning, we have had very robust engagement of all who are impacted: farmers,

ranchers, developers, watershed groups, States, Tribes, Territories. And we won't waver from that commitment. Our commitment is to implement this well, to implement the Clean Water Act well.

Mrs. GONZÁLEZ-COLÓN. Thank you.

Ms. FOX. And that is what we will do.

Mrs. GONZÁLEZ-COLÓN. Thank you.

I do have many questions for the Administrator of NOAA. I know my time is going to soon expire, but I will submit them for the record.

And one of the questions is regarding—I am happy you are here—is regarding the coral bleaching that is happening and will happen in my islands, coastal islands. I know there is [inaudible] there. I do have many concerns. So, I will submit them for the record to comply with my expiration of time.

Thank you. I yield back.

Mr. ROUZER. I thank the gentlelady.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Ms. LeBoeuf, I want to talk to you for a few minutes about the 10-knot rule, the 10-knot rule that you are wanting to impose on boats that are 65—or 35 feet and longer.

According to your all's information, approximately 15 whales have been killed by boats over the last 18 years.

Do you know how many registered boats there are in the 35- to 65-foot length?

Ms. LEBOEUF. I do not, sir.

Mr. COLLINS. OK. Well, let me back up just a second. You all are trying to take this rule out of just a small area there around Boston, and you are wanting to run this rule all the way up and down the eastern seaboard so that boats that are any larger than 35 feet have to go 10 knots up to 100 miles out.

Now right now, before this rule is implemented, it is anything over 65 feet, and it is within a small region up around the Boston area.

So, in essence, what you are trying to do, which really doesn't make any sense, you are going to kill an entire industry. An \$84 billion impact is what you are looking to do; 340,000 jobs will be impacted.

And for the number of boats, there are 63,000 registered boats, 35 to 65 feet, 15 whales. Do you know what the odds are of that? That is 1 in over 1 million that they will hit these whales.

Are you still on track to implement this rule?

Ms. LEBOEUF. Thank you very much for your question, Congressman Collins.

We are working on collecting and looking at the input from the public comment period that we just had on the ship speed rule.

Of course, as a means to try and mitigate concerns over the North Atlantic right whale, we closed that public comment period in October of last year. But, of course, we received over 90,000 comments on that proposed rule.

So, NOAA Fisheries is looking over those comments now. And those do include comments related to the various different types of vessels, the numbers of those vessels, and the potential impacts,

but also the economic impacts and the kinds of things that you just mentioned.

Mr. COLLINS. Well, I don't think you will have a hard time finding any of the information because I just gave it to you.

But I will be really brief, Mr. Chairman. I am going to be pretty blunt and honest because our appropriation bills are open now, which means we can drop amendments right down there on the floor.

So, you can either do a couple of things here. You can withdraw this misguided and stupid rule or, two, I can offer an amendment on the floor. And I will defund NOAA, and I am not just talking about this rule, but I will defund the entire department until you withdraw the rule.

Mr. Chairman, that is all I got. I yield back my time.

Mr. ROUZER. The gentleman yields back.

Mr. Van Orden.

Mr. VAN ORDEN. Thank you, Mr. Chairman.

I have a friend. His name is Tom Crimmins. He is a retired Navy SEAL, senior chief combat veteran. Before he joined the SEAL team, he was a lobsterman. And I want to echo what my colleague just said. If you continue with this incredibly poorly thought out, ideologically driven, foolish rule, you would have put Tom out of business. And that is unacceptable.

So, your ability to positively or negatively affect an entire industry is real, and our ability to positively or negatively affect your job is real.

And I don't ever want you to forget that, ma'am. OK? We are not going to let you kill these jobs because of some very, very poorly thought out, ideologically driven policy decision.

Is that clear?

Ms. LEBOEUF. Yes, sir. Thank you.

Mr. VAN ORDEN. Excellent. Let me talk more about these silly things you guys got going on.

There is an act. It states that all construction projects supported by Federal spending are required to abide by strict domestic preference rules, requiring that all manufactured products, construction materials used in the project are sourced domestically unless appropriate waiver has been issued.

All right. Sounds great, right?

Here is the problem. I talk to people that work with their hands. I was a tradesman. I am a retired senior enlisted SEAL, and that is a tradesman. Work with the hands. And this is so incredibly confusing, convoluted, the way that you guys—you guys—are applying this, that it's detrimental to our ability to do things. And I am going to give you a super concrete example.

When people put in fire hydrants—we all agree fire hydrants are good. They are—this sounds silly—they come with a can of spray paint. So, when you ding the fire hydrant, you have a way to spray-paint it, right?

The paint is made in the United States. The can is made in the United States. You know what's not made in the United States? That little button that you push. You know where they are made? China. You can't find a domestically produced little thing to make the spray paint work.

So, if you want these people to strictly comply with these things that you have been talking about—I have read all your testimony. Thank you very much for coming. I should have said that earlier.

You can't do it. So, if we followed the letter of your things that you guys do all day, we couldn't have any more fire hydrants in the United States because the little thing is made in China.

So, I really—I don't think I have another question for you or a question for you. I just want you to understand that when you guys return to the puzzle palace and start spewing out these regulations without talking to somebody that puts in a fire hydrant, you are doing an injustice to the United States of America.

So, Congress is here, and you are here. And to me, does that make sense to anyone? Does it?

I mean—Ms. Fox?

Ms. FOX. Yes, sir, thank you for raising this question.

So, I think you are referring to Build America, Buy America—

Mr. VAN ORDEN [interposing]. Yes.

Ms. FOX [continuing]. Which was passed with bipartisan support by this Congress.

Mr. VAN ORDEN [interposing]. I get it.

Ms. FOX. And so, the agencies are working in a balanced and reasonable way to meet the spirit of this law from Congress. What I can say as far as the Office of Water is: We believe that we can achieve both goals. We can spark and grow domestic manufacturing capacity right here in America, because that is what is best for the American people—

Mr. VAN ORDEN [interrupting]. Ms. Fox—

Ms. FOX [continuing]. And we can do it in a way, sir, that also provides fair and reasonable on-roads—

Mr. VAN ORDEN [interrupting]. I understand, ma'am.

Ms. FOX [continuing]. The situation you are describing—

Mr. VAN ORDEN [interrupting]. I understand, ma'am. I have 30 seconds left.

Ms. FOX [continuing]. And that is certainly what we are doing—

Mr. VAN ORDEN [interrupting]. I understand that.

Ms. FOX [continuing]. As we implement the Bipartisan Infrastructure Law.

Mr. VAN ORDEN. I have 20 seconds left, and I am just telling you, I get what you are saying. I love this country. I fought for this country for my entire adult life. So, I want what is best for America.

But the problem is when we are trying to do the spirit of stuff, you guys are actually prohibiting the ability for us to have a fire hydrant. So, I don't know how long it takes for you to figure this out, but it is already too late. That is all I am saying.

Your conduct and your regulations have real-world implications on the ability of someone to put out a fire when their house is on fire.

So, Ms. Fox, if your house is on fire, would you like a fire hydrant out front? And if you would, then please [inaudible] it and get this done, please. Let's get this done. Let's just do it.

And with that, I yield back. I am out of time.

Mr. ROUZER. The gentleman yields back.

I thought maybe we had another Member coming through the door there.

Seeing no one who has not already had 5 minutes, I know my friend and colleague, Mrs. Napolitano, had a couple of words she wanted to say.

Grace.

Mrs. NAPOLITANO. Thank you, Mr. Chair.

I just want to say that I have heartfelt thanks to you, my chair; to the ranking member, Mr. Larsen; and my colleagues for the beautiful comments regarding my retirement. It won't be for a year and a half yet. And to my excellent personal and committee staff and to the staff on the other side, my gratitude to you for your help, your input, and support. Thank you.

Mr. ROUZER. Thank you, Mrs. Napolitano. That is very nice. And we have certainly enjoyed serving with you. I look forward to serving with you another year and a half. We are going to be able to do a lot of good things, a lot of good bipartisan things as we continually have.

[Mrs. Napolitano aside.]

Mr. ROUZER. I will do what you say to an extent.

[Laughter.]

Mr. ROUZER. But I want to thank all of our witnesses. I really appreciate you being here. I appreciate your testimony and appreciate you entertaining all of our questions.

And I know there are going to be a number of questions for the record.

And let's see. Where am I here? They have a script they like me to stick to. I don't like to stick to it.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

The subcommittee stands adjourned.

[Whereupon, at 4:50 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM HON. DAVID ROUZER TO HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. Justice Alito’s opinion in *Sackett v. EPA* (*Sackett*) held that all features jurisdictional under the Clean Water Act (CWA) must have a continuous surface connection to a traditionally navigable water, defined as interstate *and* used for interstate commerce.¹ Will the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (Corps) address this definition of traditionally navigable waters in any forthcoming guidance or rulemaking? If so, please detail how EPA and the Corps will address this definition.

ANSWER. On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a final rule to amend the final “Revised Definition of ‘Waters of the United States’” rule, published in the Federal Register on January 18, 2023. This final rule conforms the definition of “waters of the United States” to the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency*. Parts of the January 2023 Rule are invalid under the Supreme Court’s interpretation of the Clean Water Act in the *Sackett* decision. Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court’s decision.

Question 2. In the preamble to the Biden Administration’s 2023 waters of the United States (WOTUS) Rule, EPA and the Corps explain that “relatively permanent”² waters could include, for example, any water temporarily accumulated in ditches.

Question 2.a. Will EPA and the Corps redefine the term “relatively permanent” going forward?

Question 2.b. Will the Agencies provide a clear test for waters to qualify as “relatively permanent”?

Question 2.c. Will the Agencies provide a clear test for waters to be considered intermittent?

ANSWER to 2.a., 2.b., & 2.c. The agencies will identify relatively permanent waters consistent with the *Sackett* decision using a variety of tools, resources, and existing guidance. The agencies are also committed to addressing any questions about the relatively permanent standard that may arise outside the scope of the August 2023 conforming rule.

Question 3. In its responsibilities assisting the Corps by crafting rules and guidance, EPA should also be concerned with the current partial pause on issuing approved jurisdictional determinations (AJDs). Are the Agencies tracking the negative cumulative effect on the economy brought about by the pause on AJDs? If so, please describe the negative cumulative effects tracked to date. If not, please detail why the data is not being tracked.

ANSWER. The pause on issuing approved jurisdictional determinations (AJDs) was lifted on September 8, 2023. EPA recommends contacting the Office of the Assistant Secretary of the Army (Civil Works) regarding questions about AJDs.

Question 4. Given the outcome of *Sackett*, please explain how EPA intends to promulgate new guidance on implementation of groundwater non-point source regulation pursuant to *County of Maui v. Hawaii Wildlife Fund (Maui)*.

¹ *Sackett v. EPA*, No. 21–454 (U.S., May 25, 2023) available at https://www.supremecourt.gov/opinions/22pdf/21454_4g15.pdf; 598 U.S. ____ (2023).

² 88 Fed. Reg. at 3086.

Question 4.a. Due to the fact that a new WOTUS rule will be published by September 1, 2023, will EPA wait until the new rule is published before issuing guidance pursuant to *Maui* to provide certainty about what operations will the National Pollutant Discharge Elimination System (NPDES) permits under the CWA?

Question 4.b. Knowing that EPA cannot change the NPDES permitting program through guidance and that changes to the regulations require notice and comment rulemaking, does EPA intend to promulgate a rule in implementing *Maui*?

ANSWER to 4.a. & 4.b. EPA developed draft guidance entitled, *Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program to Discharges through Groundwater*. The draft guidance describes the decision's functional equivalent analysis and explains the types of information that should be used to determine which discharges through groundwater may require coverage under a NPDES permit. For more information visit: <https://www.epa.gov/npdes/releases-point-source-groundwater>. EPA considered input from industry permittees, state permitting authorities, and other stakeholders who had sought additional direction to implement the Supreme Court's *Maui* decision.

Question 5. As EPA works to create baseline levels and limitations for per- and polyfluoroalkyl substances (PFAS), is the Agency considering what levels of PFAS are easily and scientifically detectable?

ANSWER. Yes. Robust, accurate methods for detecting and measuring PFAS are essential for understanding which PFAS are in the environment and the quantities present; how they are taken up by fish, wildlife, and humans; and their health effects. These methods are also essential for evaluating the effectiveness of different technologies for removing PFAS from air, land, and water and for developing and implementing future regulations. For example, in developing the Maximum Contaminant Levels (MCLs) in EPA's proposed PFAS National Primary Drinking Water Regulation, EPA considered the availability of analytical methods and the anticipated laboratory capacity to reliably measure and quantify the six PFAS addressed by the rule at or below the proposed MCLs. These methods are currently in use to support the analysis of samples under EPA's fifth Unregulated Contaminant Monitoring Rule, for which EPA has approved more than 50 laboratories to run one or both of EPA's applicable PFAS drinking water methods.³

Question 6. EPA has announced an enforcement discretion⁴ policy under which the Agency will not pursue wastewater systems for the cost of cleaning up environmental perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) pollution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), when wastewater systems properly dispose of PFOA and PFOS.

Question 6.a. Why is it appropriate for EPA to not pursue CERCLA liability claims for wastewater systems related to PFAS?

Question 6.b. Is EPA's enforcement discretion policy legally binding?

Question 6.c. Would EPA's enforcement discretion policy prevent polluters that face cleanup liability under CERCLA from attempting to recover some of these costs from water systems EPA intended to shield from liability?

ANSWER to 6.a., 6.b., & 6.c. Pursuant to Superfund authority, EPA proposed to designate PFOA and PFOS as CERCLA hazardous substances. EPA is in the process of considering public comments on that proposal. EPA has heard from various stakeholders, including farmers, water utilities, airports, local fire departments and others, and understands their concerns about potential CERCLA liability. Informed by public comments received on the proposed designation, EPA is developing an enforcement discretion policy that will reflect the agency's enforcement priorities. If the CERCLA designation is finalized, EPA would, pursuant to the proposed enforcement policy, focus its enforcement efforts on PFAS manufacturers and facilities whose actions result or resulted in the release of significant amounts of PFAS into the environment. Under the proposed policy, EPA does not intend to pursue entities where equitable factors do not support assigning CERCLA responsibility, such as farmers, water utilities, airports, or local fire departments. The policy would also describe how EPA can settle with parties to provide contribution rights and protections against third-party contribution claims under CERCLA. We believe this approach to enforcement will address stakeholder concerns and will lead to more equitable outcomes, consistent with EPA's decades-long experience with implementing CERCLA.

³ <https://www.epa.gov/dwucmr/list-laboratories-approved-epa-fifth-unregulated-contaminant-monitoring-rule-ucmr-5>

⁴ 87 Fed. Reg. at 54415.

Indeed, EPA has a proven track record of developing and applying enforcement discretion policies that are effective and well-received, and courts have sanctioned this approach.

Question 7. Congress passed “integrated planning”⁵ legislation as far back as 2018. However, there is concern that EPA is still moving too slowly in providing flexibility and assistance in helping communities be more flexible in complying with the CWA.

Question 7.a. Please provide an update on implementation of integrated planning, including whether EPA is reaching out to communities and ensuring that those under enforcement actions are aware of integrated planning opportunities.

ANSWER. In September of 2019, EPA issued national guidance [<https://www.epa.gov/sites/default/files/2019-10/documents/implentationofintegratedplanningandgreeninfrastructurethroughenforcementtools092619.pdf>] directing municipal discharge enforcement case teams to inform municipalities of the opportunity to develop an integrated plan and also to share relevant resources with the municipalities. In December of 2019, EPA issued a memorandum [https://www.epa.gov/sites/default/files/2020-01/documents/wiia_integrated_planning_implementation_memo_december_2019_508.pdf] highlighting the new provisions in the Water Infrastructure Improvement Act and how EPA will continue to support communities and states on integrated planning and green infrastructure. In June of 2021, EPA released a Report to Congress on Integrated Plans [<https://www.epa.gov/npdes/report-congress-integrated-plans-and-municipality-profiles>]. To date, more than two dozen municipalities have developed integrated plans. Of those, 13 have implemented their plans through a permit, order, or judicial consent decree. These case studies have been incorporated into a dynamic Integrated Planning Story Map [<https://storymaps.arcgis.com/stories/20e0e046df084e1ba1ecfac3414edc07>]. To further promote integrated planning as a tool, EPA has hosted webcasts, provided technical assistance to communities, and released a six-part fact sheet series on the integrated planning process.

Question 7.b. How much funding under the Infrastructure Investment and Jobs Act (IIJA) is being used to expedite integrated planning?

ANSWER. The Bipartisan Infrastructure Law (BIL) did not provide specific appropriated funding for integrated planning; however, integrated planning is eligible for Clean Water State Revolving Fund funding under both the base program funding and the supplemental BIL funding.

Question 7.c. What are EPA’s plans for moving this program along quickly and making the integrated planning process more responsive to the needs of communities?

ANSWER. In 2023, EPA formed a workgroup with states regarding resources that would promote integrated planning, and support permitting authorities with integrated planning and the process of incorporating those plans into permits. As a result of this effort, EPA published a toolkit [<https://www.epa.gov/npdes/integrated-planning-implementation-documents>] for permitting authorities. EPA is currently pilot testing the toolkit with states and municipalities. EPA will continue to promote these benefits through ongoing stakeholder engagement with the water sector, environmental stakeholders, and municipalities.

Question 8. In EPA’s June 13, 2023, update to its regulatory agenda, the Agency said it expects to issue a final rule for CWA Section 401 certification in August 2023.

Question 8.a. Is this timeline still accurate?

Question 8.b. What will be contained in this rule?

Question 8.c. How will this rule consider actions already taken by this Subcommittee this Congress related to limiting Section 401 certifications to actions themselves rather than indirectly related effects, as the CWA intends?

ANSWER to 8.a., 8.b., & 8.c. On September 14, 2023, the EPA announced the final Clean Water Act Section 401 Water Quality Certification Improvement Rule to support clear, efficient, and focused water quality reviews of infrastructure and development projects that are key to economic growth. The final rule enhances certification review and provides regulatory certainty to advance federally permitted projects. For example, the rule establishes a 6-month default timeframe (when the federal agency and certifying authority fail to reach an agreement) and a 1-year maximum timeframe for certification review (the statutory maximum). The rule emphasizes that states, territories, and Tribes may only consider the adverse water quality-im-

⁵ Water Infrastructure Improvement Act, Pub. L. 115–436, 115 Stat 5558.

pacts from the activity. To limit delays, the rule also provides a clear approach to defining the required contents in a request for certification. For more information, including the Federal Register notice, fact sheets, and information on training go to: <https://www.epa.gov/cwa-401>.

Question 9. EPA is currently reviewing comments submitted to the Federal Register regarding the proposed regulation titled, “Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power generating Point Source Category.” In March 2023, EPA and the Department of Energy (DOE) promised “interagency cooperation and consultation on electric sector resources adequacy and operational reliability.”⁶

Question 9.a. How often are EPA and DOE convening to plan to ensure uninterrupted electric reliability of our Nation’s grids?

Question 9.b. How often has EPA engaged in continued consultation with the Federal Energy Regulatory Commission (FERC) on the promulgation of rules and their impact on grid reliability? Please describe how EPA has included FERC in their interagency review process for regulatory action.

ANSWER to 9.a. & 9.b. EPA has established a very good track record over the past several decades of developing regulations to protect the environment and allow power companies to deliver reliable electricity. We develop our rules to make sure there is no conflict between grid reliability and environmental compliance, and DOE and FERC have the opportunity to participate in interagency review of all EPA rulemakings. EPA considers all input received by DOE and FERC. We are currently reviewing the feedback we received on the proposed rule, and we will take all input into consideration as we work to finalize the rulemaking.

Question 10. Last month the EPA Office of the Inspector General (OIG) issued an alert that the EPA Office of Water could not properly account for \$162 million in Federal grant money under the 2016 Water Infrastructure Improvements for the Nation Act. At a time of record funding for EPA, what steps is EPA taking to properly account for all grant money issued?

Please describe the actions EPA specifically took in response to the OIG alert.

ANSWER. The OIG has retracted the management alert. The retraction is available here: <https://www.epaig.gov/reports/other/epa-could-not-readily-identify-more-162-million-water-infrastructure-improvements>. EPA’s July 13, 2023, response to the OIG’s report provided additional background that followed the information provided to the OIG during EPA’s engagement on the OIG’s audit of two Water Infrastructure Improvements for the Nation (WIIN) Act grant programs. EPA provided the OIG with information demonstrating that EPA did not overspend appropriated funds. The OIG retracted its management alert associated with this audit after reviewing EPA’s response. EPA will continue to track and control these funds to ensure appropriated funds are within appropriated amounts for WIIN grants. EPA is deeply committed to ensuring that communities have access to the resources they need to address infrastructure and other drinking water issues.

Question 11. In an audit released in July 2023, the OIG asserted that EPA needs to improve its management of Drinking Water State Revolving Funds programs. What steps is EPA taking to ensure states are meeting loan subsidy and timeliness requirements for Clean Water State Revolving Funds also?

ANSWER. EPA continues to work closely with states to ensure they are providing and tracking additional subsidy information in a timely manner as part of the Agency’s ongoing oversight of the Clean Water State Revolving Fund programs. States are required to document their progress towards meeting these requirements in their annual reports and in the SRF Data System. In addition, EPA conducts annual reviews of the Clean Water State Revolving Fund programs to ensure their compliance with all federal requirements.

EPA will implement the practices identified in the agency’s response to the recommendations from the July 2023 OIG audit of the Drinking Water State Revolving Fund as part of the oversight of the Clean Water State Revolving Fund programs, including updating the Clean Water State Revolving Fund annual review checklist and updating the Clean Water State Revolving Fund annual review guidance for additional subsidy. EPA is taking active steps to ensure that states are properly reporting SRF additional subsidy amounts in the SRF Data System and assigning the additional subsidy amounts to the appropriate capitalization grants.

⁶See Joint Memorandum of Understanding on Interagency Communication and Consultation on Electric Reliability from Jennifer M. Granholm, Sec’y, U.S. Dep’t of Energy and Michael S. Regan, Adm’r., U.S. EPA, (March 9, 2023) available at <https://www.epa.gov/system/files/documents/2023-03/DOE-EPA%20Electric%20Reliability%20MOU.pdf>.

QUESTIONS FROM HON. PATRICK RYAN TO HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. Does the EPA's best practices require testing in areas like low-income neighborhoods, public housing, and playgrounds since lead exposure to children can seriously harm their health since underserved communities are more likely to have lead pipes?

ANSWER. Children spend a large amount of time in elementary schools and childcare facilities; when there is lead in the internal plumbing of these facilities, it can pose a risk to children's health. EPA's Lead and Copper Rule Revisions included requirements for community water systems to test for lead in drinking water in elementary schools and childcare facilities that they serve. EPA offers the, "3Ts for Reducing Lead in Drinking Water" (Training, Testing, and Taking Action), with information and recommendations to prepare schools, childcare facilities, and states to build a voluntary implementation program to reduce lead levels in drinking water. EPA's Voluntary School and Child Care Lead Testing and Reduction Grant Program [<https://www.epa.gov/dwcapacity/wiin-grant-voluntary-school-and-child-care-lead-testing-and-reduction-grant-program>] requires the use of guidance from EPA's 3Ts program [<https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water>] to support schools and childcare facilities in making progress on reducing lead in drinking water.

Question 2. This weekend, an explosive story in the Wall Street Journal, which I entered into the record, was published saying that AT&T, Verizon and other telecom companies have left behind a sprawling network of cables covered in toxic lead across the United States. In my district, lead has been leaching from these legacy cables including at a children's playground in Wappingers Falls.

What authority is the EPA missing, if any, to compel these companies from requiring the clean up on their mostly legacy cabling to ensure that parents with kids visiting playgrounds in Wappingers Falls, or children playing in the Bayou in Louisiana, don't have to be worried about severe damage to their child's development?

ANSWER. EPA is currently looking at its various enforcement authorities as we review the need to clean up risks posed legacy cables. EPA will pursue appropriate enforcement actions, where needed and appropriate, to address any risks to public health and the environment.

Question 3. Does the EPA plan on creating a comprehensive program to identify hot spots with lead in soil or surface water so that families and communities can make the best decisions for themselves?

ANSWER. EPA continues to closely review and act on the issues raised in the Wall Street Journal's investigation of lead covered telecom cables across the United States, including coordinating closely with New York State. EPA's scientific review of the data and current conditions in Wappingers Falls area sampled by New York State indicate that there are no immediate threats to the health of people nearby rising to the level of needing a CERCLA response.

EPA has established a national working group to consider next steps to ensure the public remains safe. Any future actions will be done in coordination with state and local leaders, and the public will remain informed of any actions taken.

There is no safe level of lead exposure. Young children are particularly at risk for health effects from exposure to lead, and EPA will take all actions within its authorities to ensure children are safe and protected from any potential exposure.

In addition to sampling, EPA has required major telecom companies to provide us with information needed to evaluate the nature and extent of releases or threatened releases of lead from telecommunications cables and equipment, including results of inspections the companies have undertaken, as well as sampling data and results in several of the areas identified in the Wall Street Journal article.

QUESTIONS FROM HON. HILLARY J. SCHOLTEN TO HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. For everyone across America, determinants of health for communities and individuals hinges on water quality and sustainability. I represent part of the coast of Lake Michigan and its watershed, and we have seen firsthand how lead and PFAS in our waterways and homes affects the health of our community. Despite being at the forefront of PFAS research and remediation efforts, there is much we

do not understand. For instance, the project to remediate and develop a former coal combustion site at Harbor Island in my district has faced obstacles because of PFAS discovered on site, keeping the city of Grand Haven from cleanup efforts and their long term goals to turn the island into a public nature preserve. This is not an isolated incident in Michigan's Third Congressional District: our state economy—and our nation's economy—relies on the Great Lakes and its watershed, and it is in our mutual interest that we invest in restoration and sustainability in the region.

My staff recently met with representatives from the city of Grand Haven working on the Renew Harbor Island project in my district. The discovery of PFAS on the island was unfortunate, though not surprising. PFAS has been prevalent across all parts of my district, and the health of children and families is in question.

In the event that my friends on the other side of the aisle decide to move forward with cuts to funding levels, what is the EPA's plan to protect the drinking water families use from PFAS pollution?

ANSWER. EPA's PFAS Strategic Roadmap highlights concrete actions EPA plans to take across a range of environmental media and EPA program offices to protect people and the environment from PFAS contamination. The President's Fiscal Year 2024 budget requests \$170 million to deliver on the actions laid out in EPA's PFAS Strategic Roadmap, including \$60 million for water programs. These funds are critical for developing a national standard for certain PFAS in drinking water, to getting upstream of the PFAS problem and holding polluters accountable, and to accelerating research needed to take further action faster. Reducing funding would hinder these critical efforts to protect human health and the environment from harmful PFAS pollution. For example, it could curtail EPA's work to distribute \$10 billion in Bipartisan Infrastructure Law funding to address PFAS and other emerging contaminants in water and to provide technical assistance to communities.

Question 2. I also wanted to follow up with my gratitude for Administrator Regan's recent visit to my district to celebrate the funding for installation of unleaded pipes for homes in the 49507 zip code in Grand Rapids, Michigan. This zip code has suffered historic disinvestment, and I appreciate your focus on addressing the issues plaguing communities like this. In light of that goal, how would budget cuts impact the Agency's ability to equitably invest in sustainable infrastructure?

ANSWER. If Congress cuts EPA's budget, the Agency would have to make difficult tradeoffs that could impact the health and safety of all our communities, and the water quality of waters that businesses, farmers, ranchers, and families all rely on. For example, budget cuts could delay fixing America's aging water infrastructure and could roll back our progress on ensuring that all people are protected from environmental harm.

Question 3. The President's FY 2024 budget request specifically includes \$368.2 million for the Great Lakes Restoration Initiative—a bipartisan priority for my delegation. We are all concerned about invasive species, pollution, sustainability, and climate change in our region because of their impact on our economy and natural resources. I joined most of the Michigan delegation in sending a letter requesting full funding for the Great Lakes Restoration Initiative.

If funding for geographic programs decreases, or even maintains the FY2023 levels, how will we be able to make progress on the important, bipartisan, community based efforts in the Great Lakes Restoration Initiative?

ANSWER. The Great Lakes Restoration Initiative has greatly accelerated Great Lakes restoration and protection work; cutting the Great Lakes Restoration Initiative would certainly result in a slowdown of that work. If the initiative is cut, we will not meet our commitment to cleaning up nearly all the Areas of Concern by the end of 2030. Cleaning up Areas of Concern leads to substantial economic and community revitalization. Cutting the Great Lakes Restoration Initiative means that Areas of Concern would likely experience a substantial delay in completing the work, and thereby delaying that economic and community revitalization. Further, cutting the Great Lakes Restoration Initiative would be unfortunate given the need to also focus on (1) nutrient loads and algal blooms; (2) habitat restoration to improve coastal resiliency, especially in the face of climate change; (3) invasive species; and (4) bringing more benefits of the Great Lakes Restoration Initiative to underserved communities across the Great Lakes Basin.

QUESTIONS FROM HON. GREG STANTON TO HON. RADHIKA FOX, ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. I want to address the issue of PFAS in Arizona where communities are suffering from a long-term drought and will increasingly become reliant on groundwater.

In Tucson, there are two significant PFAS plumes. One is spreading PFAS in groundwater downgradient from Davis-Monthan Air Force Base. Left unaddressed, the PFAS contamination threatens the quality of Tucson's central aquifer, its historic source of supply, and critical to Tucson's water supply.

The Tucson basin is an EPA-recognized sole-source aquifer for drinking water and is in a closed watershed, meaning it doesn't have a river or ocean where PFAS-contaminated waters can flow out of the community.

The other plume is spreading in groundwater downgradient from the Tucson International Airport and the Morris Arizona Air National Guard facility.

I am pleased that EPA and Arizona Department of Environmental Quality are collaborating with the City of Tucson to build a PFAS-treatment plant to address this issue at the Tucson Airport Remediation Project Site.

Will EPA prioritize federal PFAS response for communities like Tucson that are in "sole source aquifer" areas and are heavily dependent on groundwater?

ANSWER. EPA continues to develop new science and regulatory tools, and to deploy critical funding through the Bipartisan Infrastructure Law and other sources, to help safeguard communities and the environment from PFAS, especially in overburdened communities. Consistent with EPA's 2021–2024 PFAS Strategic Roadmap, EPA is committed to holding polluters and other responsible parties accountable for their actions, ensuring that they assume responsibility for remediation efforts and prevent, to the extent possible, future releases of PFAS.

Question 2. If so, what are some things EPA can do to make sure "sole source aquifer" communities like Tucson can rely on clean and safe groundwater as shortage and climate change negatively impact Colorado River supplies?

ANSWER. Comprehensive protection of ground water resources, including sole source and other aquifers, can best be achieved through integrated and coordinated efforts by federal, state, and local entities. EPA works to provide information and encourage partnerships for source water protection planning and to provide tools to assist in protecting source water. EPA's Creating Resilient Water Utilities initiative provides water sector utilities with practical tools, training, and technical assistance to increase resilience to climate change and assists water sector utilities by promoting a clear understanding of climate change and helping to identify potential adaptation measures, implementation options, and infrastructure financing. In addition, thanks to significant additional SRF funding in the Bipartisan Infrastructure Law—including \$10 billion dedicated to addressing PFAS, the Water Infrastructure Finance and Innovation Act (WIFIA) loan program, and other funding sources—communities have access to additional funding to address PFAS and emerging contaminants, improve water efficiency and conservation, and enhance water reuse, storage, and recharge.

QUESTIONS FROM HON. DAVID ROUZER TO MARIA-ELENA GINER, PH.D., P.E., COMMISSIONER, UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION

Question 1. In carrying out various treaties with Mexico, the International Boundary and Water Commission (IBWC) plays an important role in protecting our Southern border. Recently, Texas Governor Greg Abbott announced a plan to add marine buoys to the Rio Grande in order to secure the border while maintaining the integrity of the Rio Grande.

Question 1.a. What role does the IBWC play to protect our Southern border?

ANSWER. The U.S. Section of IBWC (USIBWC) works closely with the U.S. Customs and Border Protection (CBP) in support of efforts to secure the U.S.-Mexico border. First and foremost, through field surveys and the maintenance of border monuments and markers, we clarify the exact location of the international boundary. Identifying the boundary location can be particularly challenging in remote locations or areas where the Colorado River and the Rio Grande mark the U.S. boundary with Mexico, and the course of the river has changed. IBWC personnel regularly

testify in legal proceedings to confirm when apprehensions or lethal encounters occur in U.S. territory.

When CBP constructs structures in or near floodplains, USIBWC reviews construction plans to ensure the new structures will not obstruct the flow of the Colorado and Rio Grande rivers, and that the structures would comply with U.S.-Mexico treaties. USIBWC ensures that new structures are completely inside U.S. territory and identifies Mexican structures that encroach into U.S. territory. When there are Mexican encroachments, USIBWC arranges for their removal.

On a daily basis, CBP personnel use USIBWC levees to transport their field agents along the border, and the two agencies contribute to maintenance of the levees. In addition, as part of the Fiscal Year 2024 budget process, USIBWC has provided technical assistance to Members of Congress who seek to place surveillance cameras on IBWC property.

Question 1.b. Will the IBWC commit to working with states that want to secure their border?

ANSWER. Our agency works closely with federal and state agencies to secure the U.S.-Mexico border, through two approaches. The first is the clear definition of the boundary as described in response #1. The second is through our permitting process. The public and private sector regularly seek permits from IBWC for use of land owned or controlled (through an easement or right of way) by IBWC. The IBWC regularly informs state officials and other applicants what information needs to be provided to obtain permits. The USIBWC has also sought information from state officials to enable USIBWC review of construction projects for compliance with multiple U.S.-Mexico treaties. For example, under the U.S.-Mexico Boundary Treaty of 1970, construction in the Rio Grande and Colorado River floodplains cannot obstruct or deflect the river flow.

Unauthorized structures placed in the floodplain could become dislodged under storm conditions, floating downstream and damaging Ports of Entry, bridges, dams, levees and other property. In addition, the deflection of Rio Grande flows could alter the U.S.-Mexico border, possibly leading to the loss of U.S. territory.

Question 2. Mexico is required to deliver water from the Rio Grande to the United States under the 1944 Water Treaty, meeting designated volumes for five-year cycles. In the current five-year cycle, Mexico has delivered only 45 percent of expected volume.

Question 2.a. How much funding has the IBWC provided to Mexico in its efforts to resolve water and boundary issues along the United States-Mexico border?

ANSWER. Although the United States Section of the IBWC executes critical coordinating and advisory functions with Mexican counterparts, USIBWC does not directly spend appropriated funds on Mexican water projects or infrastructure. The Agency does not have the statutory authority to fund any operations, maintenance, or improvements of Mexican wastewater infrastructure, with the exception of a contribution toward O & M of the Nuevo Laredo International Wastewater Treatment Plant.

The U.S. Department of the Interior and the U.S. Bureau of Reclamations have the authority to co-fund water conservation and environmental projects in Mexico which result in water savings shared by the United States and Mexico. We refer you to the Bureau for the most up-to-date figures regarding expenditures on water conservation and environmental projects in Mexico.

Question 2.b. What steps does the IBWC plan to take to ensure deliveries are made and water security is maintained in the United States?

ANSWER. This spring and summer, USIBWC asked the Mexican government to initiate immediate releases from reservoirs above or near conservation capacity. We continue to advocate for these upstream releases as a way to increase water deliveries to the United States and boost storage at Falcon and Amistad International Reservoirs.

In June, we proposed an emergency Minute that would allow the US to receive a greater share of water from the Mexican tributaries in order to enhance deliveries to the US in response to the current shortfall. We expect to receive Mexico's response to this proposal in the near future.

We have also continued to implement Minute No. 325, an agreement signed in 2020 to avoid a deficit at the end of the 2015–2020 cycle. That Minute called for a follow-on Minute by December 2023 to improve the predictability and reliability of Rio Grande water deliveries to users in both countries. The Minute negotiations are underway as we seek innovative solutions to longstanding challenges. To make a break with old patterns, negotiators aim to enable and incentivize management

strategies that can be deployed during a cycle, rather than waiting until the end of a delivery cycle to address any shortfall.

We also believe “growing the pie”—expanding both countries’ water supplies—will help with treaty compliance. To that end, we are setting up a binational Rio Grande Projects Work Group to seek opportunities for water conservation projects. In addition, the U.S. Section completed a White Paper [ibwc.gov/wp-content/uploads/2023/04/Rio_Grande_White_Paper_FINAL.pdf](https://www.ibwc.gov/wp-content/uploads/2023/04/Rio_Grande_White_Paper_FINAL.pdf) earlier this year that described stakeholder proposals to launch water conservation projects in the Rio Grande basin.

Question 3. Transboundary flows can transport pollutants generated in Mexico that impact downstream surface waters in the United States.

Question 3.a. What steps is the IBWC taking to manage stormwater flows and water quality problems in the Santa Cruz River Basin watershed and in the Tijuana River Valley watershed?

ANSWER. Excess flows of Mexican wastewater have caused the failure of the Nogales International Wastewater Treatment Plant (NIWTP) to comply with Clean Water Act standards, and have strained the plant’s equipment. In Fiscal Year 2024, the USIBWC plans to spend \$600,000 on improvements to the plant. In addition, USIBWC will complete a major upgrade to the International Outfall Interceptor, a pipeline carrying Mexican and U.S. wastewater for treatment at NIWTP. USIBWC has received \$34 million in funding to completely rehabilitate the pipeline, to ensure reliable operation of the wastewater collection and treatment system. USIBWC supports congressional efforts to transfer ownership of the IOI to the USIBWC, which would allow our agency to protect the large federal investment in this key infrastructure by ensuring proper maintenance.

Mexican wastewater flows to NIWTP regularly contain excessive levels of nitrates and metals. USIBWC will finance studies to pinpoint the location of the contaminated discharges from industrial parks in the Nogales, Sonora area. Regarding the increasing levels of stormwater resulting from urbanization in Nogales, Sonora, the U.S. and Mexican Sections of IBWC are consulting with city officials in Nogales, Sonora about the need to build and maintain sediment basins. Stakeholders in the United States are considering possible support for their efforts as a cost-effective means of reducing stormwater impacts on the U.S. side of the border.

In the Tijuana River watershed, the USIBWC will receive \$300 million in United States-Mexico-Canada Agreement funds appropriated to EPA for a major expansion of the South Bay International Wastewater Treatment Plant. USIBWC is completing the pre-design activities and will soon be entering the design phase for the plant expansion, after EPA successfully concluded its environmental review in June. The expansion of the plant, accompanied by Mexico’s construction of a major new wastewater treatment plant on Mexico’s Pacific Coast as well as pipelines and pumping stations, will reduce cross-border wastewater flows by as much as 90%. The President’s budget also requested a new, contributed funds authority for USIBWC, enabling our agency to receive funds from federal and non-federal entities—an authority already enjoyed by other U.S. infrastructure agencies such as the U.S. Army Corps of Engineers. Any contributed funds could be used for the South Bay plant expansion or other activities along the 2,000-mile border with Mexico.

Question 3.b. How is IBWC utilizing recent increases in funding to improve resources while holding Mexico accountable for its aging water and sanitation infrastructure across the jurisdiction of the IBWC?

ANSWER. Of USIBWC’s two funding accounts (Salaries and Expenses, and Construction), the Salaries and Expenses account in particular has benefited from recent increases. Between FY 2021 and FY 2023, enacted Salaries and Expenses levels rose from \$49,770,000 to \$57,935,000, a 16% increase. With the additional funds, USIBWC has been able to upgrade our technology and increase the maintenance work on our equipment and infrastructure. The additional funds also allow us to address emergencies at the South Bay and Nogales wastewater treatment plants such as increased flows, part replacements, or excess chemicals in the wastewater.

USIBWC regularly tracks water and wastewater developments in Mexico that require action by the Mexican government. The Mexican Section of IBWC understands that much of its sanitation infrastructure in the border area is coming to the end of its lifecycle and consults regularly with the Mexican National Water Commission, border states and communities to obtain funds for priority repairs in the border region. For example, in the key Tijuana-San Diego area, where large populations on both sides of the border are affected by wastewater flows, the Mexican government committed under an August 2022 IBWC agreement (“Minute” No. 328) to \$144 million in sanitation infrastructure projects. At an August 7, 2023 binational meeting in Mexico City on the occasion of the one-year anniversary of the Minute, Mexican officials confirmed they secured financing for construction of a large coastal waste-

water treatment plant at San Antonio de los Buenos, and said the contract solicitation will take place in October.

QUESTION FROM HON. GRACE F. NAPOLITANO TO MARIA-ELENA GINER, PH.D., P.E., COMMISSIONER, UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION

Question 1. Ms. Giner, the United States Section of the International Boundary and Water Commission (USIBWC) was not designated as a possible recipient of federal infrastructure funding under the Inflation Reduction Act (IRA) (Pub. L. 117-169).

Are you aware of any jurisdictional concerns or other reasons for not including the USIBWC as a potential recipient of federal infrastructure investment funding in that law?

ANSWER. USIBWC receives its funding as a line item in the State Department's budget, and USIBWC's appropriations subcommittee is the House Appropriations Committee's subcommittee for Foreign Operations (HACFO). Budget deliberations on domestic infrastructure do not include HACFO representatives, and those making infrastructure appropriation decisions may not be aware of the significant infrastructure USIBWC owns and operates in the United States. In the event of natural disasters and weather-related challenges such as drought and flooding, the demands on our infrastructure increase and our facilities are subject to damage from natural disasters such as hurricanes.

USIBWC would certainly benefit by being included in discussions of proposed legislation to enhance preparedness and recovery from natural disasters and weather-related crises. Although past practice has not brought the USIBWC into discussions of domestic infrastructure planning and financing, there do not appear to be any jurisdictional prohibitions against doing so. USIBWC is not aware of an institutional "fix" to ensure the agency's consideration in multi-agency infrastructure discussions other than regular informal reminders to appropriators that our facilities merit inclusion in domestic infrastructure legislation.

QUESTION FROM HON. DAVID ROUZER TO LOUIS ASPEY, ASSOCIATE CHIEF, NATURAL RESOURCES CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Question 1. It appears there continues to be a significant backlog of Natural Resources Conservation Service (NRCS) watershed planning, projects, and rehabilitation. How does the Administration plan to use emergency funding provided by IIJA and the Consolidated Appropriations Act, 2023 to bridge this gap?

ANSWER. The agency plans to provide \$631 million of IIJA funds to 238 Watershed Operations and Rehabilitation projects in 49 states. Specifically, NRCS will invest IIJA funds in 91 dams considered to be 'high-hazard potential'—meaning, in the event of dam failure there would be significant loss of life and property downstream. NRCS will further reduce this backlog through investment in additional priority watershed projects using resources provided by the Consolidated Appropriations Act, 2023 and the Farm Bill.

QUESTIONS FROM HON. DAVID ROUZER TO AARON BERNSTEIN, M.D., M.P.H., DIRECTOR, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, CENTERS FOR DISEASE CONTROL AND PREVENTION

Question 1. How does the Agency for Toxic Substances and Disease Registry (ATSDR) interface and interact with other Federal agencies to avoid duplication in its CERCLA responsibilities, particularly with EPA's Office of Water?

ANSWER. ATSDR is the principle federal public health agency involved with hazardous substance issues. ATSDR is required by CERCLA to conduct public health assessments at all sites that are on or proposed for the National Priorities List (NPL). EPA, states, local governments, and other federal agencies may also request ATSDR's help with a site, such as in cases of accidental spills or releases. Unlike EPA, ATSDR is not a regulatory agency. ATSDR advises EPA on the health aspects of hazardous substance sites or spills and makes recommendations to EPA when specific actions are needed to protect the public's health.

ATSDR works closely with EPA and other federal agencies to conduct public health activities as requested by federal, state, tribal, local, and territorial partners. This can include providing information to health care providers to help treat patients, communicating with the public about health risks, forming partnerships to address community needs, and delivering technical assistance, such as reviews of environmental sampling data to assess for public health risks. ATSDR's multidisciplinary public health experts provide information about potential health risks or concerns that EPA and other federal, state, tribal, local, and territorial agencies utilize in their work. ATSDR has a memorandum of understanding with the EPA Office of Science and Technology of the Office of Water and the Center for Public Health and Environmental Assessment of the Office of Research and Development that serves as a mechanism for coordination in the development of human health assessment products.

Question 2. How does ATSDR's Partnership to Promote Localized Efforts to Reduce Environmental Exposure (APPLETREE) program help states to avoid spending Federal funds on environmental issues better handled locally?

ANSWER. State health departments are on the front lines when it comes to responding to environmental exposures. ATSDR's Partnership to Promote Local Efforts to Reduce Environmental Exposure (APPLETREE) cooperative agreement program funds state health departments to build their capacity to detect, respond to, and prevent harmful exposures in communities. Examples of capacity building include providing guidance, training, and funding for health department staff salaries to do this work. APPLETREE has enabled greater ability for health departments to support clinicians who may have patients with specific concerns related to exposures, build bridges between health and environmental agencies, implement protections to harmful exposures, and rapidly respond to environmental emergencies. By growing capacity within the state health departments, APPLETREE enables health departments to utilize their staff and resources to address environmental health concerns effectively and efficiently, while still maintaining partnerships with ATSDR subject matter experts that can support the state health departments' work on an as-needed basis.

QUESTIONS FROM HON. HILLARY J. SCHOLTEN TO AARON BERNSTEIN, M.D., M.P.H., DIRECTOR, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY, CENTERS FOR DISEASE CONTROL AND PREVENTION

Question 1. For everyone across America, determinants of health for communities and individuals hinges on water quality and sustainability. I represent part of the coast of Lake Michigan and its watershed, and we have seen firsthand how lead and PFAS in our waterways and homes affects the health of our community. Despite being at the forefront of PFAS research and remediation efforts, there is much we do not understand. For instance, the project to remediate and develop a former coal combustion site at Harbor Island in my district has faced obstacles because of PFAS discovered on site, keeping the city of Grand Haven from cleanup efforts and their long term goals to turn the island into a public nature preserve. This is not an isolated incident in Michigan's Third Congressional District: our state economy—and our nation's economy—relies on the Great Lakes and its watershed, and it is in our mutual interest that we invest in restoration and sustainability in the region.

In the event that budget cuts impede the EPA's ability to protect children from PFAS pollution, what can I tell families in my district? How can I justify the use of taxpayer dollars diverted from the health and safety of our drinking water?

ANSWER. ATSDR protects communities from harmful health effects related to exposure to natural and man-made hazardous substances. ATSDR does this by responding to environmental health emergencies; investigating emerging environmental health threats; conducting research on the health impacts of hazardous substance sites; and building capabilities of and providing actionable guidance to state and local health partners. ATSDR defers to EPA to answer questions about the impacts of potential cuts to EPA's budget.

QUESTIONS FROM HON. DAVID ROUZER TO NICOLE R. LEBOEUF, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Question 1. How will National Oceanic and Atmospheric Administration (NOAA) advance coastal research and the National Coastal Zone Management program for adaptation measures and resilience planning at regional and local levels?

ANSWER. NOAA will continue to advance coastal research, develop and implement adaptation measures, and conduct resilience planning under the Coastal Zone Management Act, through both the National Coastal Zone Management Program and National Estuarine Research Reserve System (NERRS). Coastal research will continue to be advanced through our 30 designated reserves around the country, including development of resilience plans, monitoring climate impacts, and identification of priority acquisition, restoration and stewardship activities. Research will also be advanced through the NERRS collaborative science program and graduate research fellowship program that invests close to \$6 million per year for climate and resilience research objectives. The 34 coastal states and territories that participate in the National Coastal Zone Management Program will continue to advance the development and implementation of measures to adapt to the impacts of climate and extreme weather, such as the development of vulnerability assessments and strategies, and planning to help site renewable energy technologies, with funding under the CZMA, including \$10 million in competitive and non-competitive funding from the Enhancement Grant Program under the CZMA's Section 309.

Question 2. How is NOAA spending its \$516 million in supplemental funding under IIJA to the Operations, Research, and Facilities (ORF) fund in fiscal year 2024? How much of that funding will be allocated to the coastal management planning process?

ANSWER. NOAA's Fiscal Year (FY) 2024 Bipartisan Infrastructure Law (BIL) investment will continue to protect coastal communities and habitats, conserve natural resources, facilitate advances in climate-related research and technology, and promote sustainable economic development focusing on the New Blue Economy. Similar to previous years, NOAA will sustain a number of BIL grant-making programs including transformational habitat and coastal resilience, fish passage, marine debris, coastal zone management and national estuarine research reserve habitat protection and restoration, regional ocean partnerships, and the National Oceans and Coastal Security Fund. NOAA will also invest in flood and inundation mapping and precipitation atlases, ocean and coastal observing systems, and streamlining permitting processes.

NOAA has set aside \$10 million for coastal zone management programs, and \$6 million for national estuarine research reserves in FY2023 that is available non-competitively for program partners to increase their capacity, develop and complete planning priorities and oversee projects, and to build partnerships with potential project partners to advance their work under BIL. In FY 2024 NOAA expects to set aside the same level of non-competitive funding for these programs. Likewise, the competitive restoration and conservation grants for coastal zone management and national estuarine research reserve programs, transformational habitat and coastal resilience grants, and the National Oceans and Coastal Security Fund, invite applicants to submit design, engineering and planning projects that support efforts that will lead to on-the-ground restoration projects in future years.

QUESTIONS FROM HON. JENNIFFER GONZÁLEZ-COLÓN TO NICOLE R. LEBOEUF, ASSISTANT ADMINISTRATOR, NATIONAL OCEAN SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Question 1. Assistant Administrator LeBeouf, last Saturday (8 July), an article published in one of our local newspapers warned that a severe coral bleaching event around Puerto Rico is imminent. I understand NOAA has already issued a coral bleaching watch for our islands. And according to the article, experts fear that this year's bleaching event could be similar or worse than the one we experienced in 2005, when up to 97 percent of Puerto Rico's corals were impacted.

As you know, coral reefs support our islands' tourism-based economy and buffer our coastlines against floods and erosion. Protecting them is therefore a priority for us.

Last Congress, we reauthorized the Coral Reef Conservation Act, providing NOAA new tools to support coral reef management and restoration efforts. I know the

agency is working to implement these, and I appreciate that it is keeping my office informed about its progress.

However, I wanted to take this opportunity to raise the issue of the imminent coral bleaching event in Puerto Rico. And provide you an opportunity to discuss any efforts NOAA is undertaking to address it.

Question 1.a. So, what actions is NOAA taking to help tackle and, if possible, minimize the impact of the imminent coral reef bleaching event around our Puerto Rico? What efforts are you pursuing to support local coral reef managers?

ANSWER. Planning is underway in Puerto Rico to respond to a significant bleaching and mortality event due to thermal stress, and NOAA staff have initiated conversations with coral managers and restoration practitioners in Puerto Rico and the U.S. Virgin Islands on accessing funding in the Coral Emergency Response Fund we administer with the National Fish and Wildlife Foundation. We are working with Puerto Rico Department of Natural & Environmental Resources (PR DNER) and coral restoration practitioners to create a response plan as well as transferring lessons learned from the rescue efforts in Florida to replicate that effort to the extent possible given Puerto Rico's lesser capacity to rescue corals.

NOAA Coral Reef Watch, which provides predictions and near real-time satellite monitoring of thermal stress on all coral reefs in the U.S. and around the world, is working to both track the status of this heat stress event, and to constantly provide coral reef managers on the ground with the best available data on the environmental conditions surrounding their reefs, so they can take informed action to protect and conserve coral reef resources.

- NOAA Coral Reef Watch's satellite-based Regional Virtual Station for Puerto Rico [https://coralreefwatch.noaa.gov/product/vs/gauges/puerto_rico.php] reached an Alert Level 1 on August 20. This means that enough heat stress has accumulated, such that significant bleaching is expected. Degree Heating Weeks (a measure of accumulated heat stress) are accumulating earlier than ever before in the satellite record. NOAA National Coral Reef Monitoring Program surveys during the week of July 24 revealed that bleaching is already occurring in four species of coral.
- NOAA Coral Reef Watch's modeled Four-Month Coral Bleaching Heat Stress Outlook [https://coralreefwatch.noaa.gov/satellite/bleachingoutlook_cfs/index.php] is predicting Alert Level 2 [https://coralreefwatch.noaa.gov/product/5km/index_5km_baa-max-7d.php] conditions (associated with severe, widespread bleaching and significant mortality) will begin during the week of September 17 and persist through mid-to-late November.
- All indications are that large-scale, significant coral bleaching will begin by early September, and the heat is predicted to intensify to mortality-levels by the week of September 17–24. Unfortunately, these projections apply to both Puerto Rico and the U.S. Virgin Islands.
- What these forecasts and models do not account for are storm events. Tropical storm Franklin has slightly cooled the waters off of Puerto Rico. Other storm events in the Atlantic Ocean could possibly cool Puerto Rico's waters in the coming weeks, but the magnitude and duration of any cooling will be a function of the frequency and intensity of storms. Repeated tropical storm-induced cooling has the potential to ameliorate coral bleaching-level heat stress, but introduces the threat of storm surge and high winds.

Question 1.b. Can I get your commitment that NOAA will prioritize and ensure Puerto Rico receives the necessary resources and assistance to protect and restore our corals from any upcoming bleaching event?

ANSWER. NOAA will work with the Commonwealth to make sure PR DNER staff and other coral managers receive timely information on when conditions are likely to induce coral bleaching. NOAA has emergency response funds that Puerto Rico coral managers can apply for via our Coral Emergency Response Fund with the National Fish and Wildlife Foundation.

Question 2. NOAA's Fiscal Year 2024 budget request includes over \$3.6 million to improve fisheries science and management efforts in the U.S. Pacific and Caribbean territories. This has been a longstanding issue in Puerto Rico and the U.S. Virgin Islands, where our fisheries are considered "data poor." This creates challenges for stock assessments to determine overfishing limits, annual catch limits, and the status of local fisheries.

Could you elaborate on the work NOAA intends to carry out with the requested \$3.6 million to support fisheries science and management efforts in the territories? And has the agency considered investing some of its already available funding under the Bipartisan Infrastructure Law and the Inflation Reduction Act to help improve fisheries data collection in the territories?

ANSWER. The NOAA budget request includes \$1.2 million in additional resources for the historically under-served U.S. Caribbean to improve estimates of fishing removals, obtain representative samples of age and length of the catch, and develop fisheries independent surveys for priority species (e.g. lobster, conch, reef fishes). Increased resources in the U.S. Caribbean would allow NOAA Fisheries to advance fisheries management by establishing systematic partnerships with territorial agencies and by promoting cooperative research efforts to develop and conduct statistically-sound data collection and fisheries resource surveys. These funds will provide immediate benefits to the Territories by enabling the use of data-limited stock assessment techniques for an increased number of species and by facilitating the evaluation of management options (e.g. MPAs). The Southeast Fisheries Science Center proposes to accomplish these objectives through extensive capacity building and engagement with local fishing communities and universities. This cooperative approach is cost-effective, and will ensure that Territorial scientists, managers and communities are able to participate as effective partners in the management of their local marine resources.

- As part of the Inflation Reduction Act (IRA) funding for climate-ready fisheries, NMFS is using \$500k in Fiscal Year 2023 to address gaps in data critical for stock assessment and resource management in the U.S. Caribbean. Based on objectives identified in recent Caribbean Strategic Planning workshops held with Federal, Territorial, and academic scientists and managers, the primary focus is on further developing fishery-independent surveys to obtain size-structured abundance metrics. These funds will increase Territorial fisheries management capacity by expanding Puerto Rico fishery-independent reef fish and lobster trap surveys to the U.S. Virgin Islands through cooperative research with commercial fishers. Funds will also go to analytical support for better integration and coordination of existing programs, and to preparing existing survey data for development of future survey designs.

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