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ACCESSING CLEAN WATER INFRASTRUCTURE ASSISTANCE: SMALL, RURAL, DISADVANTAGED, AND UNDERSERVED COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

NOVEMBER 8, 2023

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ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

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C O N T E N T S

ACCESSING CLEAN WATER INFRASTRUCTURE ASSISTANCE: SMALL, RURAL, DISADVANTAGED, AND UNDERSERVED COMMUNITIES

WEDNESDAY, NOVEMBER 8, 2023

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

U.S. Senate Committee on Environment and Public Works Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, Hon. Thomas R. Carper (chairman of the committee) presiding.

Present: Senators Carper, Capito, Markey, Kelly, Padilla, Fetterman, Mullin, Ricketts, Sullivan.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Good morning, everybody. Welcome this beautiful autumn morning. What a beautiful day.

I welcome our witnesses and everybody else who is joining us today here across the Country.

I want to begin by thanking our colleagues and witnesses for joining us this morning, it is like a day-after morning, after some big elections around the Country. We will see after the smoke settles what that looks like.

One of the great things about being on this committee is we actually kind of like each other, Democrats and Republicans, we like to work together. We believe that bipartisan solutions are lasting solutions, and when the elections are over, the elections are over, and let's figure out how to work together and get things done.

I am particularly pleased today that we are going to hear from three witnesses who are uniquely qualified to share your perspectives on the challenges, and when I think of challenges, I think of opportunities. Challenges, I think, are opportunities, very much the same. The challenges faced and the opportunities presented by clean water systems serving small, rural, and disadvantaged communities in Delaware and West Virginia and across our Country.

As many of you know, my family, Shelley has heard it more times than she wants to remember, she has lived her whole life in West Virginia, my family and I, my sister and I started there, in Raleigh County, near Beckley. We lived right by Beaver Creek, which you couldn't swim in, you couldn't drink the water, couldn't

eat the fish from Beaver Creek. So we learned early on why that was a problem and why we needed to do something about it.

With that said, often when we talk about water infrastructure in our Country, we tend to discuss drinking water systems that bring water to our homes, to our school, and to our businesses. Yet it is important to note that wastewater and stormwater systems are every bit as vital to the health and well-being of our communities, just as our drinking water counterparts are.

I want to be clear: clean water systems are indispensable. They mitigate pollution, they protect the health of our waterways, they shield communities from stormwater runoff, and they even help us to halt the spread of disease across the Country.

For example, health officials in our State, Delaware, have been able to use data from our wastewater facility in Newcastle County, where about two-thirds of our population lives, in order to track the spread of opioids and diseases like COVID-19. They have been able to do so thanks in part to the funding and resources from EPA.

These types of public health advances are what we should hope every community in America has the opportunity to embrace.

For over 35 years, Congress has provided Federal wastewater assistance to communities through EPA's Clean Water State Revolving Fund program. In the last 10 years, we have heard from many disadvantaged communities who struggle to compete for these funds.

In addition, aging facilities, rising costs, emerging contaminants, climate change and population shifts have all contributed to mounting financial burdens for wastewater treatment facilities throughout our Nation. These challenges are even worst for small, rural, and disadvantaged communities, which oftentimes have fewer ratepayers and as a result, typically have fewer resources.

Many of these same communities also struggle to effectively administer clean water systems due to a shortage of qualified labor and technical expertise to address growing challenges. Last Congress, our other committee came together and worked to address many of these challenges in the Drinking Water and Wastewater Act.

Some of you may recall, we drafted, we negotiated and we unanimously advanced this bipartisan legislation out of our committee. It went on to pass the full Senate by a vote of 89 to 2. Senator Capito will tell you that doesn't happen every day, an 89 to 2 vote. It was a day I will never forget.

But our water bill, that bill, combined with the committee's historic highway legislation, served as the foundation of the Bipartisan Infrastructure Law that the President signed into law almost 2 years ago to the day. In the Bipartisan Infrastructure Law, we provided an unprecedented $55 billion to improve our Nation's water infrastructure, the largest investment we have ever made of its kind.

As part of that investment, we included more than $11 billion for clean water infrastructure needs. And I might add, this makes me especially happy, it was all paid for.

The Bipartisan Infrastructure Law also directed EPA to provide nearly half this funding in the form of grants or principal forgive-

ness. We did so to help address the backlog of wastewater infrastructure projects and support more rural, low-income and disadvantaged communities.

The wastewater investments made through the Bipartisan Infrastructure Law were historic; they were much needed. Yet as I said in our September hearing on the Law's drinking water investments and authorizations, there is more that needs to be done and more that can be done.

I often say that everything I do, I know I can do better. There is always room for improvement. I think that is true probably for all of us, and it is true here today.

As we all know, water is essential for life, and clean water is essential to our health and well-being. We close by offering some beautiful words of wisdom from the late Dr. Martin Luther King. I think these are good words for us today, these are good words for us any day of the week.

Here is what he said many, many years ago: "No matter who we are, or where we come from, we are all entitled to basic human rights of clean air to breathe, clean water to drink, and healthy land to call home." I agree, we have a moral obligation to provide Americans with clean water access, and these other things as well.

Today's hearing is an opportunity for us to think about how we can better support wastewater services in small, rural, underserved, and disadvantaged communities. Again, we look forward to hearing from our witnesses to gain your insights on your work and to hear your new ideas as well.

Before we do, I want to turn this over to Senator Capito. We have a lot going on, and we are also in different committees. I am supposed to be in another committee right now.

It is hard to be in two places at once, so I am going to ask Senator Capito to take over. I will be back as soon as I can. I know she has other obligations as well.

Thanks so much. Welcome, Senator Capito.

OPENING STATEMENT OF HON. SHELLEY MOORE CAPITO, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator CAPITO.

[Presiding.] Thank you, Mr. Chairman. We will keep things going here for you.

And thank you all, our witnesses, for being here with us today. It is an important hearing to provide the oversight of the implementation of clean water investments for small and disadvantaged communities under the IIJA. Again, I would like to thank the witnesses for their willingness to testify about this important topic.

This committee values your perspectives on the opportunities and challenges facing this Nation's water infrastructure, some of it is very, very old, as well as your insights into effective solutions. The Drinking Water and Wastewater Infrastructure provisions of the IIJA had a special focus on the infrastructure challenges faced by small, rural, disadvantaged, and underserved communities. Just as the Chairman said, it has been over 2 years since the enactment. It is easy for stakeholders on the ground and we in the Congress to identify the EPA's implementation if the implementation

is working. More importantly, what is not working and how we can improve this.

The IIJA water provisions drafted by this committee authorized $55 billion in funding for a range of water infrastructure programs, including targeted grants for small and disadvantaged communities, funding for lead service line replacement, support for innovative water technologies, as well as money for wastewater treatment and stormwater management.

These funding opportunities provide new resources for grants and low-interest loans for technical assistance. These funds can support critical infrastructure upgrades including construction of wastewater facilities and wastewater treatment systems, non-point source pollution management, and measures to manage stormwater and subsurface drainage.

Additionally, the funding can support capacity building initiatives, including work force development and training programs to help communities build the expertise they need to manage and maintain their water systems for years to come. Despite these significant funding opportunities, many rural, small, and disadvantaged communities are still grappling with aging infrastructure that is in need of repair or replacement, while others are dealing with emerging contaminants like PFAS that require specialized treatment technologies.

At the same time, these communities often lack the resources and the technical expertise needed to address these obstacles leaving them vulnerable to wastewater problems leading to public health risks. These communities may not have the staff or technical capacity to track and apply for grants and loans as they become available.

That is why the Clean Water Act explicitly empowers the States to determine which of their communities qualify as disadvantaged. The EPA should therefore work with the States to get this money where it is needed as quickly as possible.

Unfortunately, I have significant concerns that the EPA is overstepping its statutory authority to use these funds to affect Administration policy priorities that were not approved by the Congress under the Clean Water Act or the IIJA. The result is unnecessary friction in getting these programs stood up and investments flowing to the communities that need them.

Inconsistent application of Buy America waivers across agencies and even within them has caused delays for projects. More concerning, regulatory guidance on environmental justice and service of the Administration's very vague Justice 40 goal tied to State formula grants appears to be an effort by the EPA to wrestle away the State's statutory authorities under the Clean Water Act.

We all have concerns about disadvantaged communities, urban and rural, minority or low income, receiving the funding that they need and deserve. The States know their communities and their needs the best and what will work over the long haul.

They also realize that water systems do not neatly align within the Justice 40 initiative's preference of using census tracts to define EJ communities, making the EPA's guidance impractical to implement. The EPA must not sidetrack generational progress that

can be made through the IIJA due to a political agenda in this Administration.

These unnecessary obstacles imposed by Federal regulators are leading to delays, uncertainty, and the potential for litigation while allowing historic investments to be eaten up by increased inflation, higher interest rates that we have experienced since the passage of the IIJA. EPA needs to get out of the way and let States and communities get to work.

I will close by saying what everyone in attendance in this room knows and across the Country: water infrastructure investments are critical. They are critical to public health, environmental health, and economic development. The carefully negotiated bipartisan successes this committee has achieved to date for the wastewater section has been ground in the cooperative federalism that is enshrined in the Clean Water Act.

I am hopeful these investments, properly implemented, can create more jobs and drive more economic growth. Those kinds of economic opportunities need to be available everywhere, in my home State and across the Country. I remain committed to working on the issues that are so important to my State of West Virginia and the States of my fellow committee members and across the Country.

Thank you to our panel for everything that you do to keep our Country's water and wastewater systems clean and healthy.

With that, I will introduce our witnesses. First, we will hear from Olga Morales-Pate, the Chief Executive Officer of the Rural Community Assistance Partnership, known as RCAP, well known to me. RCAP is a national network of non-profit partners working to provide technical assistance, training, resources, and support to rural communities. Through its regional network, RCAP has partnered with more than 350 water systems and technical assistance providers to support thousands of communities across the Country.

Thank you for joining us, Ms. Morales-Pate. You are now recognized for 5 minutes to give your statement.

STATEMENT OF OLGA MORALES-PATE, CHIEF EXECUTIVE OFFICER, RURAL COMMUNITY ASSISTANCE PARTNERSHIP, INC.

Ms. MORALES-PATE. Thank you, Ranking Member Capito and members of the committee for the opportunity to testify today.

Safe, reliable, and affordable water is the foundation of economic development and public health. Investment in this infrastructure is especially important to ensure that rural areas remain great places to live. Thank you for your work on this very important issue.

My name is Olga Morales-Pate. I am the CEO of the Rural Community Assistance Partnership, a national network of non-profit partners working to provide technical assistance, training, and resources communities in every State and territory, tribal lands and colonias.

RCAP's network consists of more than 350 technical assistance supporting rural utilities with infrastructure development projects from the pre-development stages all the way to operations. Last year, we served over 3.3 million rural and tribal residents and

more than 1,600 of the smallest, most distressed communities, with an average population of 1,500 and a median household income of less than two-thirds the national average.

Technical assistance is critical to rural utilities, as they often lack staff capacity, just as you said. Particularly challenged are wastewater utilities. As natural disasters impact their aging infrastructure and operating costs continue to increase, utilities find themselves making difficult financial decisions, and at times robbing Peter to pay Paul by subsidizing wastewater expenses with drinking water revenues.

For many rural utilities across the Country, Federal grants are the only pathway to critical infrastructure projects, and to ensure ongoing and reliable services for their customers. RCAP is very thankful for this committee's writing and passage of the Water Infrastructure title of the IIJA, the largest investments in water in U.S. history. Dedication of 49 percent of the SRF funding to be disbursed to disadvantaged communities in the form of grants as opposed to loan financing has been a game changer, and we want to thank you for that.

Much of RCAP's technical assistance is funded through EPA programs, particularly those recently under the WRDA bills. RCAP is a proud EPA partner. As a national environmental center, our job is to ensure that this funding gets into the hands of the disadvantaged communities that need it the most.

As we enter the third of 5 years of this funding, it is important for the committee to consider what is next. In our opinion, our priority is the impending IIJA funding cliff and the need to consider reauthorizing and fully funding the SRF programs at increased levels with dedicated funding available in the form of grants for both communities and a technical assistance component to ensure their access to these funds.

It is also key for EPA's suite of smaller targeted programs intended for rural communities to reauthorize and fund small water system emergencies, the connection of services from individual household to treatment works, and dedicated funding for decentralized wastewater systems. Without these programs and dedicated funding, small utilities will continue to struggle.

The creation of a Federal Low-Income Water Assistance Program inclusive of rural communities building up from this committee's authorization of a pilot program and a needs assessment is another key priority. As clean water costs grow, a permanent program will provide a lifeline to the lowest income rural households and the systems that serve them.

We know that only 10 percent of the utilities across the Country, regardless of size, have ever received SRF funding. The percentage of small, disadvantaged utilities is even smaller. And it isn't because there is no need, but rather because there is no capacity to apply, compete, and secure these funds.

For that reason, small utilities should be incentivized to be part of regional solutions. Regional projects can help rural communities achieve economies of scale, develop the capacity they lack, and become sustainable. However, creative funding and technical assistance are also needed for these projects to happen.

To address the growing rural wastewater challenges, RCAP encourages the committee to create a small and disadvantaged community grant program specific to wastewater, like the drinking water program created in 2018. In creating this program, RCAP invites you to take a broad and holistic approach and include capital infrastructure funding for the centralized systems. Flexibilities should be included to help communities and households that are unserved and lacking modern infrastructure, and for systems struggling with operations and maintenance costs.

On behalf of the RCAP network, I want to thank you for your program, for the programs you have created. As you all know, our work is not done. I look forward to your questions and continuing to work with you to ensure all rural people and places have the resources needed to thrive.

Thank you.

[The prepared statement of Ms. Morales-Pate follows:]

Rural Community Assistance Partnership

Testimony to the
Committee on Environment and Public Works

United States Senate

Mrs. Olga Morales-Pate
CEO

Rural Community Assistance Partnership Incorporated

November 8, 2023

Northeastern & Caribbean RCAP	Southeastern RCAP	Great Lakes RCAP	Southern RCAP	Midwest RCAP	Western RCAP
Serving all six New England states, New York, New Jersey, Pennsylvania, Puerto Rico and the U.S. Virgin Islands.	Serving Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.	Serving Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin.	Serving Arkansas, Mississippi, Tennessee, Texas, Oklahoma, Louisiana and Alabama.	Serving Iowa, Kansas, Minnesota, Missouri, Nebraska, Montana, Wyoming, North Dakota and South Dakota.	Serving Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington.

Introduction & About RCAP

Thank you, Chairman Carper, Ranking Member Capito, and members of the committee for this opportunity to discuss the importance of small, rural, disadvantaged, and underserved communities' ability to access federal financing for clean water infrastructure. Safe, reliable, and affordable water infrastructure is the foundation of economic development and public health in every community regardless of size, and investment in this infrastructure is especially important to ensure that rural areas remain great places to live and thrive. I want to thank the committee for your previous and continued work on this important issue.

My name is Olga Morales-Pate, and I am the CEO of the Rural Community Assistance Partnership (RCAP). RCAP is a national network of non-profit partners working to provide technical assistance (TA), training, and resources to rural and Tribal communities in every state and territory, and on Tribal lands and Colonias. Through our regional partners, more than 350 technical assistance providers build capacity that leads to sustainable and resilient infrastructure and strengthens rural economies. Our approach is grounded in long-term, trusted relationships with thousands of rural and Tribal communities across the country.

RCAP assists rural communities with funding applications and every phase of the project planning and development process, as well as providing training and technical assistance. We help communities understand how to properly manage and operate their infrastructure in a fiscally sustainable manner and ensure that federal borrowers meet the terms of their loans.

Last year, RCAP served more than 3.3 million rural and Tribal residents in more than 1,650 of the smallest, most distressed communities. The average population of the communities we served was 1,525, with a Median Household Income (MHI) of less than two-thirds the national MHI. We served almost 300,000 individuals from Indigenous communities and we served more than 1 million people of color. Additionally, RCAP conducted 639 training sessions, serving more than 6,600 systems, and reaching more than 13,000 attendees. The RCAP network is the sum of six regional partners across the U.S. that collectively cover every state and territory, as well as Tribal lands and Colonias:

- Communities Unlimited (CU) – The Southern RCAP
  - Serving Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, and, Texas.
- Great Lakes Community Action Partnership (GLCAP) – The Great Lakes RCAP
  - Serving Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin.
- Midwest Assistance Program (MAP) – The Midwest RCAP
  - Serving Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.
- Rural Community Assistance Corporation (RCAC) – The Western RCAP
  - Serving Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Utah, and Washington.
- RCAP Solutions (RSOL) – The Northeastern and Caribbean RCAP

    - Serving all six New England States, New York, New Jersey, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands
- Southeast Rural Community Assistance Project (SERCAP) – The Southeastern RCAP
    - Serving Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

For 50 years, the RCAP network has partnered with multiple federal agencies including the Environmental Protection Agency (EPA) to bridge the gap between federal programs and the communities they serve. In many of these communities, water systems are often run by volunteers or one or two full time staff members. Our assistance and the availability of federal resources provide the only pathway to completing critical infrastructure projects and ensuring the continued reliability of utility services for their community.

This committee has been extremely busy in the last decade, authorizing new programs as well as increasing the authorizations of existing programs at EPA.

RCAP is extremely supportive of this committee's leading role in crafting and passage of the Infrastructure Investment and Jobs Act (IIJA), legislation that represented the largest investment in water infrastructure in the history of the United States. 49% of this funding is required to be dispersed as grants (or the equivalent) specifically for disadvantaged communities. This is crucial for small and disadvantaged communities because they lack the economies of scale to take out loans from the State Revolving Funds (SRFs) to support the extremely expensive projects required to keep their water safe and reliable.

However, for small, rural, disadvantaged, and underserved communities to be able to access this funding, they need to have access to TA. This is why RCAP is proud to have been selected as a National Environmental Finance Center (EFC) by the EPA this year to help ensure that this historic investment makes it to the communities that need it most.

RCAP also conducts TA for EPA under the Water Infrastructure Improvements for the Nation (WIIN) Act Grants to reduce lead in drinking water. While the crises in Flint, MI and Newark, NJ were some of the most high-profile instances of lead contamination of drinking water, at the time of the Flint Crisis in 2016 there were more than 2,000 communities – at least one in every state – that had elevated levels of lead in their drinking water. Many of these communities were small or disadvantaged and were unable to bring their own crisis to the nation's attention. The WIIN Act Grants made strides in addressing issues in all 2,000 communities, but again, TA was – and continues to be – needed to ensure small and disadvantaged communities have access to funding to remove this powerful neurotoxin from their water. RCAP is proud to be one of the organizations providing this technical assistance.

While TA is of course critical in ensuring small communities have access to federal funding, we need to increase federal funding itself – and particularly federal funding aimed at small, rural, and disadvantaged communities, which have different needs and concerns than larger communities. That is why RCAP wholeheartedly supported this committee's creation of the

assistance for small and disadvantaged communities grant program for drinking water in 2018, as well as the program's increased authorization in IIJA.

Policy Priorities
In line with RCAP's mission to improve the quality of life in rural communities, below are some of RCAP's key recommendations for this committee's work this Congress.

Avoid IIJA's Funding Cliff
EPA's most recent reports indicate that that public water systems need to invest $473 billion and $271 billion on drinking water and clean water infrastructure respectively, just to keep our water systems in a state of good repair. This estimate does not include the increased investments communities will need to protect themselves from increasingly common natural disasters, or emerging threats like cyberattacks and PFAS.

In recent years, federal funding sources for rural communities have grown, thanks in part to fresh injections of water infrastructure and economic development investment included in the landmark IIJA legislation. However, within the next few years, this IIJA funding will expire, leaving communities across the country facing a fiscal cliff that will directly threaten the safety and reliability of their water and risk squandering progress that the historic legislation has made. RCAP urges this committee to redouble its efforts to ensure that federal investment in water infrastructure is sustained at the levels authorized by this committee after IIJA expires.

Fully Appropriate Water Infrastructure at Authorized Levels
Further, while IIJA made the aforementioned historic gains in addressing our nation's water infrastructure needs, the programs authorized by this committee were not fully funded in the appropriations section of the bill. In fact, many programs have received *no funding* to date since IIJA's passage, and the overall deficit between IIJA authorizations and appropriations is projected to be roughly $20 billion over the five years of IIJA if current spending trends continue.

For example, the Technical Assistance and Grants for Emergencies Affecting Small Public Water Systems program was created and authorized at $15 million per year and the Operational Sustainability of Small Public Water Systems program was created and authorized at $50 million per year. Neither were funded in IIJA, nor have they received regular annual appropriations in the fiscal years that have followed.

These programs and others like them are of critical importance to rural communities, particularly because small communities are challenged to access SRF loan financing, as they lack economies of scale needed to generate funding to repay loans and to compete for loans in the first place relative to midsize and large communities. Appropriating funding towards these targeted funding streams, including dedicated technical assistance authorities to help communities overcome project development challenges, will be key in ensuring small communities are not left behind by federal investments.

RCAP urges EPW committee members to work with the Senate Appropriations Committee to fully fund *all* the EPA water infrastructure programs that were authorized in IIJA.

Create a Nationwide, Permanent Low-Income Assistance Program

The program that would perhaps be most transformative for small and rural communities, the Rural and Low-Income Water Assistance Pilot Program, was also not funded in IIJA. This program would begin to address the one issue that virtually every community in America has in common: reliance on customers' increasingly precarious personal financial situations to pay for the vast majority of water infrastructure investment at water systems across the U.S.

Before IIJA, the federal cost-share of overall water infrastructure investment fell below 5%, an all-time low. This is far lower than other types of infrastructure, even types this committee has jurisdiction over, such as roads, bridges, and ports. Because income inequality and the costs of keeping our water safe continue to grow, this puts small, rural communities that do not have the luxuries of economies of scale and a large customer base in an increasingly perilous position. Ultimately, it means that everyone, regardless of income level, will receive less safe and more unreliable water and wastewater services, unless something changes.

The Rural and Low-Income Water Assistance Pilot Program is the first step to addressing this problem. The intention of the program is to allow communities of all sizes to receive a grant to run a low-income assistance program in whatever way works best for their community, and report back on their experiences. This committee can then use those experiences to craft legislation that would create a nationwide, permanent low-income assistance program with the flexibility needed to support all communities.

RCAP urges this committee to work with the Senate Appropriations Committee to fully fund this program and begin to address this urgent issue.

Water System Regionalization

As noted, many of the unique challenges faced by small, rural water systems stem from their relatively small base of ratepayers, leading to difficulties achieving economies of scale and having funding on hand to complete capital infrastructure projects or regular operations and maintenance activities. One solution that has had a high rate of success for rural communities across the U.S. is collaboration between neighboring utilities, through measures ranging from simple partnerships to pool specific resources to full regionalization of entities under one combined system.

While regionalization has been an effective tool for struggling small systems, its implementation has been limited because of issues with regulatory compliance for utilities during the time they are forging a partnership and because there is no dedicated funding for regional entities to explore viable regional solutions – such as planning funds for regionalization studies. It is key for Congress and the administration to address this issue by creating incentives, not barriers, for more of these partnerships to be forged. RCAP is encouraged by

measures EPA is taking to promulgate a water system restructuring rulemaking in its implementation of America's Water Infrastructure Act (AWIA) of 2018, but additional policy solutions and dedicated funding are needed to expand the uptake of this beneficial practice, including dedicated funding for technical assistance for third-party entities to help facilitate regional solutions where regionalization makes financial, technical, and managerial sense.

New Funding Sources for Small Communities

Numerous studies have shown the dramatic increase in the financial costs of keeping our drinking water and wastewater systems safe and reliable. The committee has acknowledged this with the creation of the Assistance for Small and Disadvantaged Communities Grant Program for drinking water in 2018 and the increase in the program's authorization in IIJA. RCAP hopes to work with this committee on a similar program for wastewater as well.

Rural community challenges are particularly significant for wastewater and are often overlooked when it comes to providing federal resources. The costs of dealing with increased flooding exacerbated by climate change, eliminating combined sewer overflows, and other capital improvements, on top of the increasing day-to-day costs of operations and maintenance, are many times too much of a financial burden for small communities to bear.

This is evidenced by difficult revenue decisions the utilities we work with must make, often 'robbing Peter to pay Paul,' so to speak, and having drinking water bill revenues subsidize costly wastewater upgrades and operations and maintenance activities. It would be an incredible lifeline for small systems to have greater access to flexible federal resources for wastewater through the creation of a new program, amongst other policies.

Improved federal resources for this purpose would also guarantee the sustainability of our drinking water sources for future generations. Across the country, there are millions of septic tanks, many of them failing and contaminating our drinking water sources, which eventually will effect public health.

Broader Flexibilities

As referenced throughout this testimony, another key barrier holding back rural water infrastructure improvements is a general lack of flexibility in how federal assistance is made available. If water stakeholders including the champion legislators that make up this committee are to adequately address the needs of underserved and unserved communities, a more comprehensive approach should be employed. We must ensure that funding is not restricted solely to carrying out capital upgrades for centralized systems, as is often the case. Centralized systems are often not a financially viable solution for small, rural communities. Regardless of system structure, if additional funding streams and flexibilities are not implemented, more drinking water sources will be compromised, particularly groundwater at risk of pollution from failing septic systems.

We will be far more effective in our mission to get assistance to those who need it most if a holistic approach is taken. These flexibilities include, but are not limited to, ensuring

communities on non-central systems are able to access funding, increasing eligibility of funding for operations and maintenance activities in disadvantaged communities, and of course prioritizing grant funding versus loan financing. RCAP's mission is centered around these 'gap-filling' activities, and Congress should pursue making them more readily available to ensure low-capacity communities are not left behind.

Access for All

Finally, all people should have access to safe, reliable, and affordable water infrastructure, but unfortunately this is not a reality for many. In fact, there are more than two million people in the U.S. who fall under the category of unserved, and do not have access to running water and a working toilet in their homes, and that number is growing. Not only does this deny millions of people the fundamental dignity of having access to modern sanitation, but a recent report found that this is costing the U.S. economy $8.58 billion per year – nearly three times annual appropriations for water infrastructure. RCAP is grateful for this committee's efforts in the past to close the water access gap and looks forward to continuing to work with you on this important goal.

Conclusion

In closing, RCAP is grateful for this committee's tireless work over the last decade to address the crises facing rural water infrastructure, culminating in IIJA's historic investments. As this committee well knows, our work is not done. The sustainability of every community begins and ends with horizontal infrastructure. If we don't build our rural communities' water and wastewater infrastructure, they will never be able to grow their economy, workforce, housing, and so many other services that make a community sustainable. RCAP looks forward to working with each of you to ensure communities have the tools they need to promote improved quality of life across rural America.

RCAP works with communities and partners across the country to advocate for and generate economic opportunities for rural areas. Safe, reliable, and affordable water is the foundation that economic growth relies on. The services provided through programs created by this committee deliver critical assistance to small and disadvantaged communities where it is most needed.

I thank the committee for inviting me to testify today, and I look forward to working with you and your colleagues to ensure all rural people and places have the resources they need to be successful.

Supplementing this testimony on the pages that follow is my bio information, as well as a case study example of RCAP's important work in a rural West Virginia community.

RCAP Rural Community Assistance Partnership

RCAP's Chief Executive Officer, Olga Morales-Pate, is an accomplished and experienced leader on environmental justice and rural community development issues, became CEO of RCAP in October 2022, after spending 19 years at the Rural Community Assistance Corp (RCAC), the western RCAP.

As RCAC's Assistant Director of Community and Environmental Programs, she led a team of 48 and managed an annual portfolio of nearly $10 million in grants and contracts. Olga also developed and led RCAC's regionalization work and authored legislation that established the New Mexico Colonias Infrastructure Fund which has secured $144.6 million for 263 infrastructure projects since 2011. She also served on the EPA's National Drinking Water Advisory Council (NDWAC) as an appointee of President George W. Bush, where she established strong working relationships with the agency while leading advisory efforts on issues such as climate change, hydraulic fracturing, carbon sequestration, and harmful algae blooms and cyanotoxins among others.

RCAP Rural Community Assistance Partnership

Great Lakes COMMUNITY ACTION PARTNERSHIP

RCAP CASE STUDY
Mineral Wells Public Service District

Mineral Wells, West Virginia
Population: 5,674
Funding Program: EPA NPA 2022
System Information: Mineral Wells Public Service District, Wood County, WV

PROTECTING AGAINST CROSS CONNECTIONS

Mineral Wells Public Service District (PSD) is a small, rural drinking water system located in Wood County, West Virginia. The PSD serves a population of 5, 674 in Wood, Wirt and Jackson Counties. In 2021, the district received a Corrective Action Plan from the West Virginia Department of Environmental Protection (WV DEP) to correct a significant deficiency. It needed to implement an active Cross-Connection Program.

The goal of a Cross Connection Control Program is to protect the public water supply by preventing the flow of non-potable water into the distribution system. In addition to public education and outreach, this generally involves inspecting the interior plumbing and connection to the public water of some customers each year to check for potential illegal cross connections. If these are found and

cannot be eliminated, or if risks for backflow are found, the customer may be required to install a backflow prevention device.

ECONOMIC CHALLENGE FOR COMPLIANCE

The PSD had contacted a backflow inspector contractor and was informed that it would cost $20,000 to complete128 inspections of facilities connected to their system for the presence of cross-connections, determine the degree of hazard each presented and make recommendations for the required backflow prevention assemblies or other actions needed. As all small rural water systems, the PSD did not have an extra $20,000 on hand. The Office Manager contacted RCAP asking for help.

VALUABLE ASSISTANCE FROM WV RCAP

Several West Virginia RCAP staff are state certified Backflow Prevention & Assembly Inspector Testers. RCAP provided technical assistance by creating the inspection letters and then conducting the inspections. Following each inspection, they drafted a letter advising the facility of the results, and if the installation of a backflow prevention devise was required.

> ***"Thank you very much for your assistance. It is helpful to have someone with your experience to offer guidance and direction."***
>
> - **Linda Watson, Office Manager-Mineral Wells PSD**

The technical assistance provided by WV RCAP delivered a home run for Mineral Wells PSD. The assistance provided saved the PSD $20,000, improved public health by reducing the chance of contamination through cross-connections, and brought the system into compliance with state regulations. The board and staff of Mineral Wells PSD are dedicated to providing high quality

drinking water services to present and future customers and always seeking to improve the organization because the community deserves the best they can offer.

For more information about training and services from Great Lakes RCAP, including backflow prevention and cross connection control programs, please visit www.glcap.org/rcap.

West Virginia RCAP is a part of Great Lakes RCAP and the Rural Community Assistance Partnership, Inc. RCAP is a national network of regional nonprofit organizations that provide comprehensive, on-site technical assistance and training to help small, rural communities address their drinking water, wastewater, and other community development needs. Most services are provided at NO cost to the community

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Senate Committee on Environment and Public Works
Hearing Entitled *"Accessing Clean Water Infrastructure Assistance: Small, Rural, Disadvantaged and Underserved Communities"*
November 8, 2023
Questions for the Record for Olga Morales-Pate

Senator Wicker:

1. The Infrastructure Investment and Jobs Act included historic water and wastewater system funding. However, small and rural communities often do not even know where to begin when it comes to funding options and the application process for many of these programs. In your testimony, you state that "for small, rural, disadvantaged, and underserved communities to be able to access this funding, they need to have access to technical assistance." What unique issues do small, rural, underserved, and disadvantaged communities face that make technical assistance so important for these communities?

Senator Wicker, thank you for your question and for your dedication to supporting small and rural community water systems.

Rural communities struggle with a unique set of challenges when it comes to providing safe, reliable, and affordable drinking water and wastewater services to their residents. These challenges all stem in some way from financial and staffing capacity limitations that are a symptom of systems' inability to develop economies of scale.

Whereas a larger suburban or urban water utility collects payments from tens of thousands to as many as millions of customers, and can therefore absorb large and unplanned costs, small systems have far more limited financial resources. Many of the systems the RCAP network serves have a few dozen to a couple hundred ratepayers and one part-time staff member, possibly two, in some cases relying exclusively on volunteers.

Small utilities operate in a very reactive manner due to their lack of available resources. This dynamic causes difficulties with handling day-to-day operations and maintenance activities, let alone taking on expensive capital upgrades when infrastructure reaches the end of its useful life, fails due to damage from extreme weather events, or must be upgraded to meet regulatory guidelines for things like PFAS remediation and lead service line replacement.

Rural systems struggle disproportionately to come up with the finances for these capital investments themselves, but also for necessary pre-development activities such as crafting engineering plans, hiring contractors, applying and competing for federal funding, and managing those projects. This is where technical assistance providers like RCAP fill in gaps and grow capacity to get these systems to address their infrastructure needs. RCAP and its network of regional partners has been providing technical assistance to rural America – essential America – for over 50 years in every state, including in Mississippi through our regional partner Communities Unlimited. With increased federal technical assistance resources, this work can be expanded. This is an important equity consideration, as rural communities must not continue to

be left behind in their water and wastewater infrastructure, a key driver of public health and economic development.

Senator CAPITO. Thank you very much, Ms. Morales-Pate.

Next, I will introduce our second witness. John Byrum is the Executive Director of the Nueces River Authority. The River Authority is a special Texas State agency dedicated to providing safe water services to communities throughout the south Texas Nueces River Basin. Welcome.

STATEMENT OF JOHN BYRUM, EXECUTIVE DIRECTOR, NUECES RIVER AUTHORITY

Mr. BYRUM. Chairman Carper, Ranking Member Capito, and members of the committee, thank you and good morning, for the opportunity to address you here today.

I am honored to serve as the Executive Director of the Nueces River Authority, a subdivision of the State of Texas, created by the legislature in 1935 to protect, preserve, plan, and develop the resources of the 18,000 square miles of the Nueces River Basin. The Authority is governed by 21 board members appointed by the Governor of Texas.

The Authority's office is in Uvalde, Texas, the home of former Vice President John Nance "Catus Jack" Nance Gardner, the former Texas Governor Dolph Briscoe, and actor Matthew McConaughey. Those are all good memories. It is also the site of one of our Nation's most horrific memories, three blocks down the road from our general offices, which is the site of Robb Elementary School. The lives of those 21 victims still live in our hearts today.

Today's hearing seeks insight on the State Revolving Loan programs for small, rural, and disadvantaged communities. For my part, I began working in the water utilities in 1979. Almost all of my career has been with small and rural providers, and I am proud to be a member of the AA club, holding an A water and A wastewater license.

The committee is wise to be concerned about clean State water revolving funds and their performance with small, rural, and disadvantaged communities. Although 70 percent of Americans are customers of large drinking water systems, where the State Revolving Loan program has worked well, most community systems in the U.S. are small systems. In fact, the data shows that the small water systems serving 3,000 people or less account for 77 percent of the number of systems in the U.S.

There are not only more small systems, but these small systems have higher rates of water quality non-compliance than the larger systems. In addition, because the small systems lack economies of scale, their customers face heavy financial burdens to meet the clean water investments needed that are currently estimated at more than $130 billion.

Of the 1,210 cities in Texas, 834 of them or 69 percent are small, serve small communities, less than 5,000 people. First, there is simply just not enough money for the State Revolving Loan Fund or from the general revenues for small and rural needs. In addition to the scarcity of dollars, the programs place hardships on small systems via the requirements necessary to apply, which is a form of access denial by process.

To apply, an application detailing copious financial information and background and a preliminary engineering report must be sub-

mitted. Most small systems have limited credit history; nevertheless they are creditworthy. During my 43 years of professional water career, I have not heard of any entity defaulting on a water loan or grant in Texas. Simply put, the financial information required for the application far exceeds that required by the regulations and guidelines of the Federal program.

An example of how a system is flawed is evident in a recent application for funds from the Uvalde County, Texas Reclamation and Conservation District. This district serves 360 people. The median household income is 44 percent of the average. The water system serving this community has been cited since 2015 for grossly exceeding the amount of contaminant level for arsenic in every sample taken. Their request for $1.7 million to remove the arsenic from the water supply was not accepted, due to the application not having a preliminary engineering report that met the State guidelines.

This district has one employee who works 4 hours a day for the water system and 4 hours a day somewhere else to make a living. Hardly enough to fill out the copious information needed for the application. They did have a study that detailed levels of arsenic in the source water and how they proposed to remove it to safe levels. But it did not meet the requirements of the program. Because of that, these people woke up this morning drinking water with high arsenic and bathing in that water with high levels of arsenic.

I believe the requirement of a preliminary engineering report that follows those rigid guidelines established in excess of the program requirements is an overreach. My ask today is that the overreaching of State agencies administering the State Revolving Loan funds be audited and forced to comply with the minimum requirements of the program.

I also ask for a greater percentage of the total money to become available for small systems that need it.

Thank you.

[The prepared statement of Mr. Byrum follows:]

US Senate Committee on

Environment and Public Works

Testimony

Provided by

John J. Byrum II

Executive Director

Nueces River Authority

Uvalde, Texas

November 8, 2023

Honorable Chair and Distinguished Members,

I bring you greetings from the citizens of the Nueces River Basin located in Southwest Texas. I am honored to serve as the Executive Director of the Nueces River Authority, created by the Texas Legislature in 1935 to protect, preserve, plan, and develop the resources of the 17,500 square mile Nueces River Basin. The Authority is governed by a 21-member Board of Director's appointed by the Texas Governor with advice from the Senate.

The Authority's general office is in Uvalde, Texas the final resting place of "Catus Jack" former Vice-President John Nance Garnder, the birth state of Presidents Dwight D. Eisenhower, and Lyndon B. Johnson, and the home of George H.W. Bush, and George W. Bush. Those are just a few of the good memories from the Lone Star State. The site of our worst memory sits 3 blocks down the road from our general offices, which is the site of Robb Elementary School, where the horrific shooting took place just over a year ago. The lives of these twenty-one people live in our hearts as we meet here today.

Today I am here to speak with you about the State Revolving Loan Funding (SRF) Programs.

The Clean Water State Revolving Fund was established as part of the Clean Water Act in 1987, and the Drinking Water State Revolving Fund was established in 1997 by the Safe Drinking Water Act. Both programs are much needed and, for the most part, have functioned well.

I am not here today to find fault with the programs, in fact I energetically support them, however there is one group that does not have fair access to the grants and loans offered through these programs. So, I am here today to request an amendment to the programs to address the inequity realized by the rural and small water systems throughout the US.

If I may, I would like to begin with some background on how I have knowledge and experience with the programs. I began working for municipal water utilities in September of 1979. Since 1979, I have worked for municipal utilities and had some experience with companies that serve local governments.

Of my municipal utility career, all but 5 years of that time was employed with small and rural water providers. Today, as Executive Director of the Nueces River

Authority, we are engaged and highly focused with assisting small and rural utilities as they struggle to meet the needs of their customers and the requirements of the federal and state regulations.

So, thirty-eight of the 43 years of my municipal utility experience has been with small and rural systems.

The Safe Drinking Water and the Clean Water Acts impose requirements regarding drinking water quality and wastewater treatment in both rural and urban areas. The requirements apply to public water supply systems, whether publicly (government) or privately owned. EPA regulates the quality of drinking water provided by community water supply systems which are defined by the Acts as systems having at least fifteen service connections. These community water systems serve approximately three hundred million people. So, water systems regulated by the act provide drinking water to 97% of all Americans. Although approximately 70% of Americans are customers of large drinking water systems, the vast majority of community systems in the US are or the systems serving these 97% of all Americans, are small systems. So, what the research finds is that small water systems (those systems serving 3, 300 people or less) account for 77% of all water systems in the US.

To recap, approximately 19% of the U.S. population lives in areas defined by the Census Bureau as rural, but water service to these areas accounts for 77% of the total number of water systems in the US.

There are not only more small systems, but these small water systems often have higher rates of noncompliance than larger systems. In addition, because small systems generally lack economies of scale, their customers face a particularly heavy financial burden to meet needs for clean water investments. They need projects to improve the public health and environmental conditions of the people they serve, and these projects are currently estimated at more than $130 billion, according to state surveys.

Although the State Revolving Loan Programs mentioned previously are programs aimed at assisting community water systems in meeting the requirements of the federal and state regulations, they do not provide enough focus and allot enough of the funding for rural areas to overcome the number of small systems needing assistance.

Of the 1210 cities in Texas, 834 or 68.9% have a population of less than 5,000. There is simply not enough money allocated in Texas for rural and small cities to meet these needs.

In addition to the discrepancy in the numbers the programs place a hardship on small systems is the application and the requirements necessary to apply. To apply, an application detailing copious financial information and background and a preliminary engineering report must be submitted.

Most very small systems have limited credit history, and they face challenges in trying to raise capital in financial markets even if they are in an area where the Median Household Income is at least near or equal to the national average to cover the cost of developing a preliminary engineering report for the project.

Larger cities are more capable than smaller systems in putting together the funds needed to pay for the preparation of a preliminary engineering report, the cost of retaining financial advisors and bond counsel. In addition, the small cities have limited access to financial markets and their creditworthiness is more sensitive to local economic conditions than larger systems.

In many states, like Texas, the financial information required with the application far exceeds that required by the regulations and guidelines for the program. Very detailed information about the utility, the largest customers of the utility, along with background of the financial audits usually the last 3 to 5 years of audits, must be submitted. The entity is "encouraged" to have their financial advisor and bond counsel at the pre-application meeting.

In Texas, before an entity can apply for SRF funding, they must be invited after a Project Information Sheet (PIF) has been ranked by outside contractors. Then the applicant is required to have a pre-application meeting with the Texas Water Development Board (TWDB) project staff.

In 2021, the Nueces River Authority submitted a PIF for a small city within the Basin. The project was ranked the #2 most needed project in the state after the PIF's were ranked. The River Authority received notice that the TWDB would accept an application for funding this project. The River Authority made several requests for the pre-application meeting. The meeting was finally held two working days prior to the due date for applications. Assembling the required

information for the application was impossible. This move by the TWDB, basically disqualified the project rated as the #2 most needed project in Texas, in an area where the median household income was less than half of the state average. The project is still not funded and today the effluent from this city's outdated facility is contributing to the pollution of Baffin Bay, an extraordinary area that brings in approximately fifty-nine million dollars per year to the local economy through sport fishing, commercial fishing, and tourism. This area of the watershed also contains other small cities just like the one that applied for funding with median household incomes at less than 50% of the state and national average. Many of which are contributing to the high contaminant levels found in Baffin Bay.

So, the #2 most needed project in 2021 ranking was not funded and is still without funding today.

I am also aware of a water system in Angelina County, Texas that was successful in obtaining a grant and loan from the State Revolving Fund through the assistance from their local river authority. The assistance was provided in the form of a 70% grant, and 30% loan.

They are not able to accept the funding due to the utility rate increase that will be needed to amortize the loan. The increase would make their monthly water bills approximately $88.00 per month. The median household income in the area they serve is $38,000 per year. Not enough money to maintain a household and pay a $88.00 per month water bill.

Another item that prevents small cities and districts from applying is the massive amount of financial information required by the funding agencies. The requirements far exceed the requirements of the act. The Act requires information congruent with local governmental financing requirements. The agency's requirements are like those required by private industry. This places an even higher hurdle in the path of small cities receiving grants from the programs.

In the Nueces River Basin almost all small cities have a median household income that is well below the national and state levels. In most cases, they are not able to compete for loan dollars. When they do compete for grant dollars, it is usually through a private company that offers grant writing services for a percentage of the grant. Although these small cities with the limited staff find that the paperwork required for the application is beyond their capabilities, when grant

writers are used, these cities find themselves in fierce competition for grant dollars and if successful, find owning the grant writer a significant amount of the money awarded.

An example of how the system is flawed is evident in a recent application for funds for the Duval County, Texas - Reclamation and Conservation District. The district serves the communities of Realitos and Concepcion with a total combined population of 360 people.

The median household income is only 44.4% of the average for the State of Texas.

The water system serving these communities has been cited since 2015 for grossly exceeding the maximum containment level for arsenic in every sample taken. Their request for $1,665,000 to improve the arsenic removal to the water supply was not accepted due to the application not containing a preliminary engineering report.

They had a study detailing the levels of arsenic in the source water and drinking water, and how they proposed to improve the treatment to comply with the maximum contaminate limit, however today, these people are still drinking and bathing in water that is much higher than the maximum limit for arsenic.

I believe the requirement of a preliminary engineering report that follows rigid guidelines established in excess of the program requirements is an overreach and a vivid example of the program misses the mark of for small systems throughout the US. This is why small systems today still need in excess of $130 billion to meet the needs of their customers and satisfy the requirements of the Safe Drinking Water and the Clean Water Acts.

The Duval County Reclamation and Conservation District has one part time employee. He works 4 hours per day operating the district and has another part time job for the other 4 hours. His 4 hours at the district are barely enough to check the systems, take care of accounts payables and receivables, read water meters, send bills, take monthly samples, and complete the required monitoring reports, much less complete applications for grants and loans.

The Duval County District is just one example of the type of utilities in the Nueces River Basin, the State of Texas, and the US where the State Revolving Programs, even with set-a-sides for small systems, are not working. This is why small systems

need improvements in excess of $130 billion dollars to meet the requirements of the Safe Drinking and Clean Water Acts.

The USDA programs available are good programs, however they do not provide the amount of funding needed for these small systems to gain compliance.

My ask today is that the overreaching of the State agencies administering the State Revolving Loan Programs be audited and forced to comply with the minimum requirements of the program.

During the 43 years of my professional career, and as a proud holder of Class “A” Water and Wastewater Operator licenses, I have not heard of any entity defaulting on a loan or grant in Texas. I believe like many of my colleagues that the requirements in the Acts are stringent enough to protect the Federal and State Governments of the Country and State I love and feel privileged to be a citizen of.

I also ask that a greater percentage of the total money become available for small systems.

Even with the inflation act, the amount of federal outlays for environmental and water spending is at the lowest year of the Reagan Administration, which was 1.3% of total federal outlays, and below the JFK, LBJ, Nixon, Ford, Carter, George H.W. Bush, and Clinton Administrations overall. (Please see Attachment A)

We must increase the level of spending and address the infrastructure issues in our water and wastewater systems, and we must find a way to increase the amount of funding of the small water systems which represent 77% of all water systems in the US.

I feel honored to be here today, however I feel a great sense of responsibility.

A responsibility shared by each of us testifying, as well as you, the leaders of our great Country. I am here today because I love my Country, and I believe in our form of government, and I believe in you, and this Committee’s capability to amending that act to help small cities receive the monies they need to service their customers and include high levels of funding into the buckets for our water and wastewater utilities.

Thank you, John J. Byrum II Attachments: A: Federal Outlays for Water Infrastructure Over the Last 60 Years

FUNCTION 300 AND WATER SPENDING STATS 1962-2022

Prepared for Nueces River Authority by TRPR

JFK/LBJ's eight years rank second in overall Function 300 at 1.87% of total federal outlays and score **highest in the 60 years 1962-22 in water investments** percent of federal outlay at 1.02%. The modern environmental era was born during this era.

Carter was the **highest in Function 300** at 2.4% in six decades and third place in water investment percentage of total federal outlays at .72%.

Nixon/Ford are third in Function 300 at 1.77% and second in water at .78%. **Ford spent 28% more than Nixon** on Function 300 averaging 2.2% compared to Nixon's five years of 1.72% Function 300. Ford enacted the **highest environmental spending rate increase** during the six decades.

Reagan was fourth in Function 300 at 1.48% of total federal outlays and fourth in water at .48%. Both spending categories quickly declined through the eight years, but **the water percent drop over 8 years was 33% below Carter and 53% below the JFK/LBJ** highwater mark.

Clinton was **5th in Function 300** at 1.46% of total federal outlays rising one spot above Bush 1 and almost matching Reagan's 1.48% but **6th in water** at .28% the first level below .3% of total federal outlays and a whopping **75% below JFK/LBJ**. "The era of big government is over (especially for water)."

Bush 1 was 6th in Function 300 spending of 1.37% of total federal outlays but **rose to 5th place in water** allocation at .34% of total federal outlays. His "no net loss of wetlands policy was another strength."

Bush 2 was 7th in Function 300 at 1.22% and 7th in water at .24% almost unchanged from Clinton.

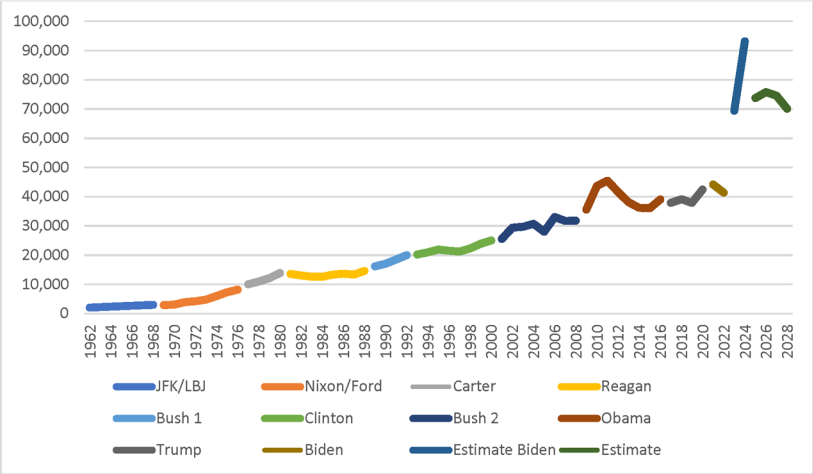
Obama was 8th in Function 300 at 1.06% and tied for 7th with Bush 2 at .24% for water, the ***only time that there was no loss in water funding*** *allocation.* However, Obama's 2015 Function 300 budget dipped below 1% to .9% for the first time since 1962.

Trump averaged under 1% in Function 300 at .8% average over four years. That was a first. Water investments were also the lowest over 60 years at .15%.

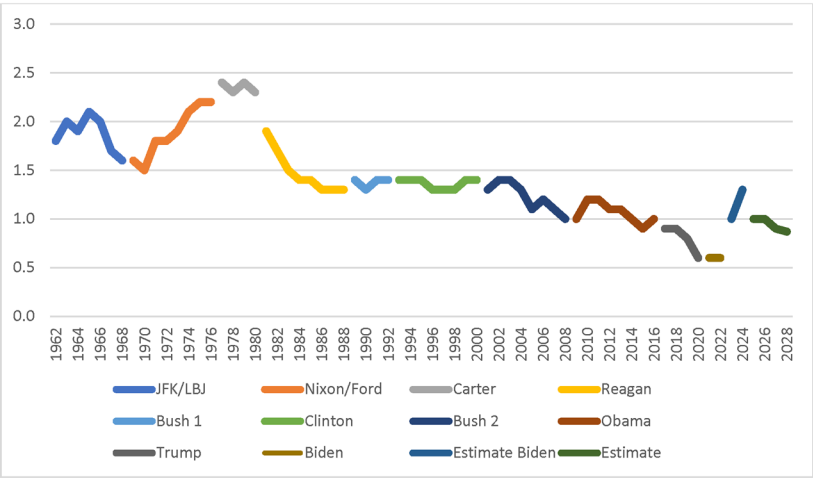
Biden began at Trump's last year level of Function 300 which was lowest ever at .6% and that was repeated in 2022. The 2023 Function 300 rose to 1% of total federal outlays reversing the decline. In 2024 a 1.3% level is projected for Function 300 which would be the highest since 2004, which was Bush 2's fourth year in office. Also, the 1.3% in Function 300 in 2024 matches Reagan's lowest during his last three years. Budget projections at .9% Function 300 for 2025-28 would put Biden lowest except for Trump. On water spending Biden's four-year level would be .18% of federal outlays and Trump averaged .15%.

Bottom line: Biden's budget represents a modest increase in Function 300 and water funding putting his record into the mid-to-lower tier of environmental and water spending. Biden's highest Function 300 at 1.3% of total federal outlays in 2024 matches Bush 1's lowest year and Reagan's lowest 3 years.

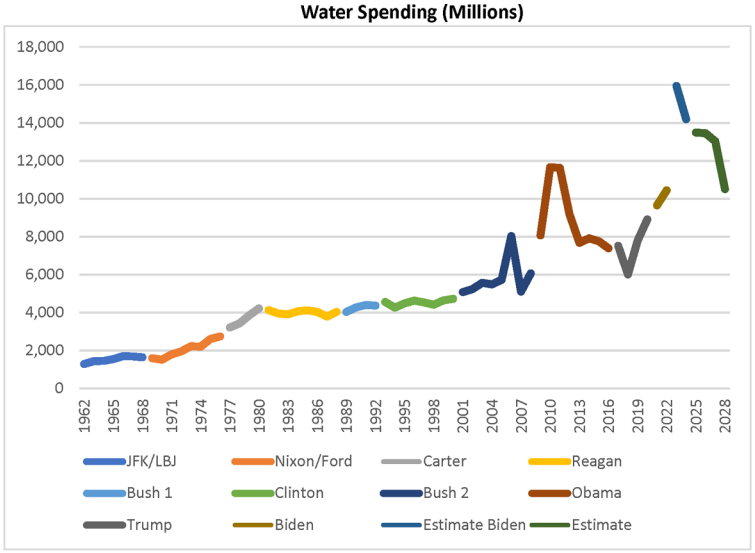
Function 300 Funding 1962-2022 by Presidential Administration (Millions)



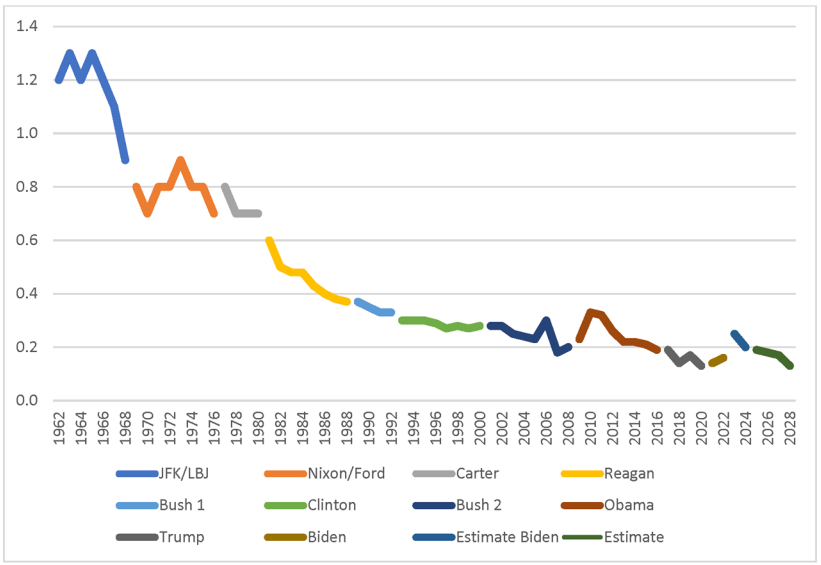
Function 300 PERCENTAGE of Federal Outlays by President 1962-22

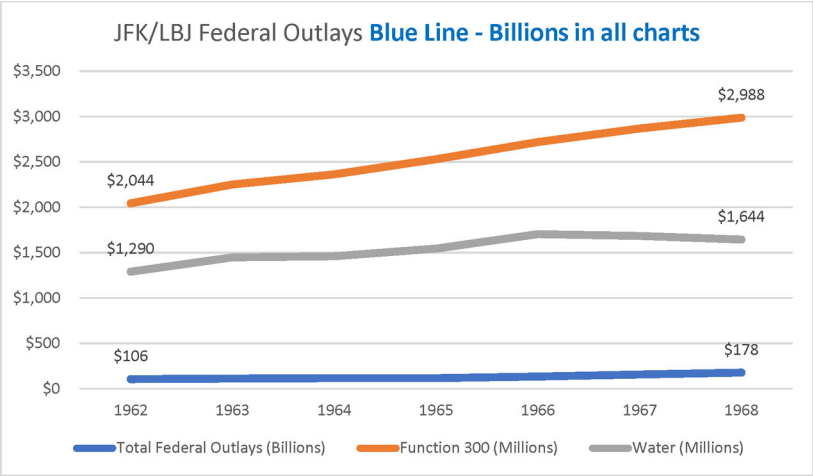


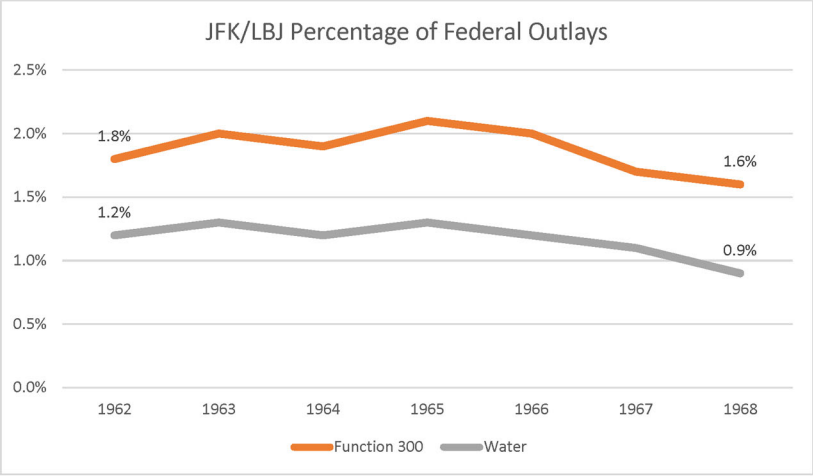
Water Spending (Millions)

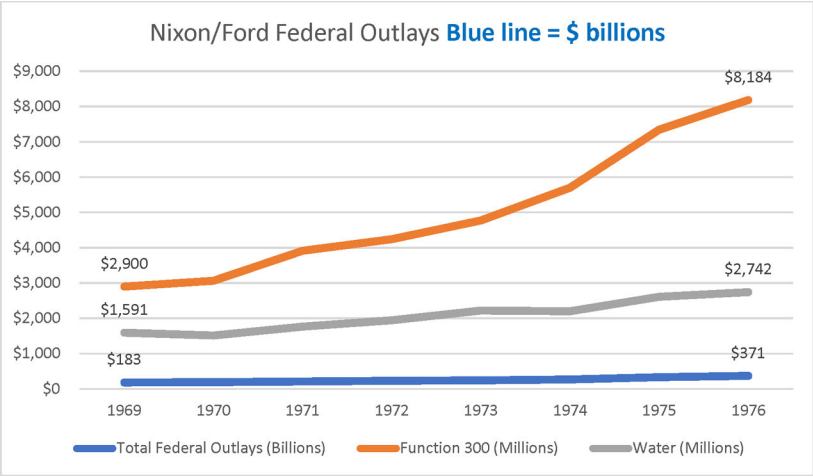


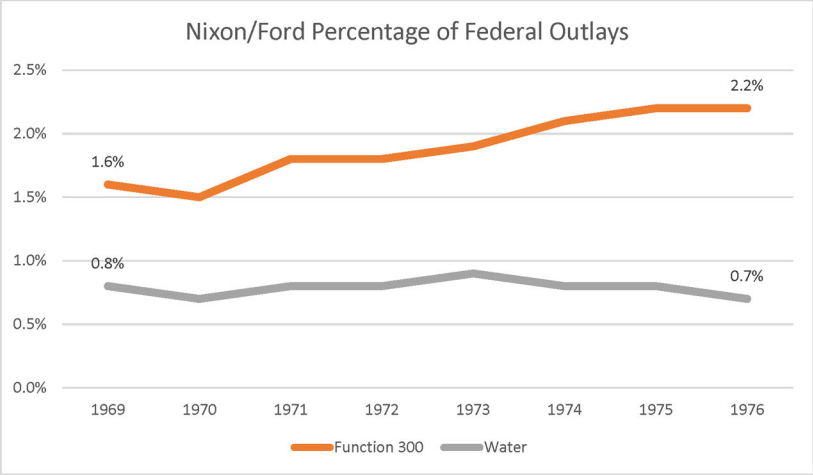
Water Spending PERCENTAGE of Federal Spending

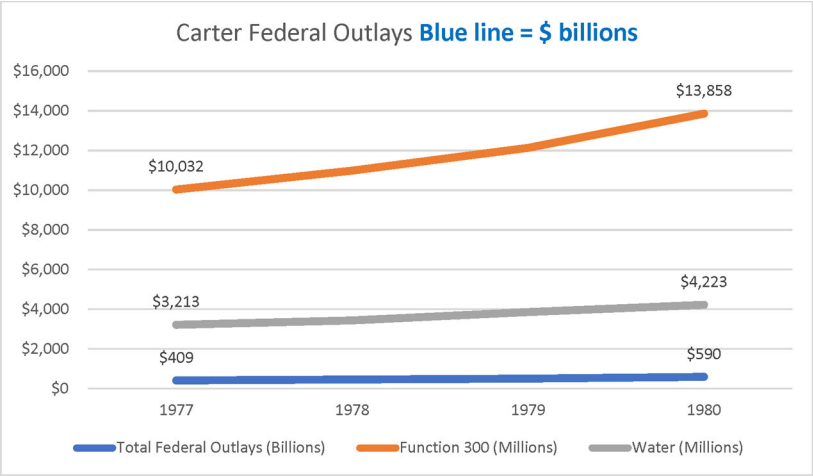


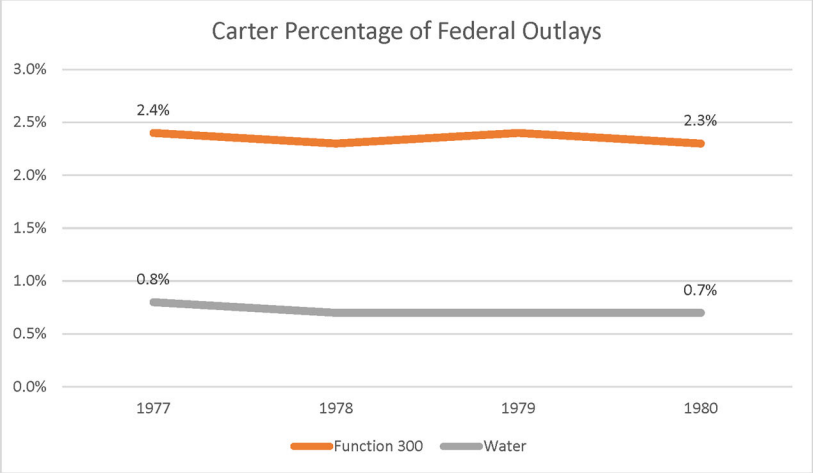

JFK/LBJ Federal Outlays Blue Line - Billions in all charts
$3,500
$3,000
$2,500
$2,000
$1,500
$1,000
$500
$0
$2,988
$2,044
$1,644
$1,290
$106
$178
1962
1963
1964
1965
1966
1967
1968
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)

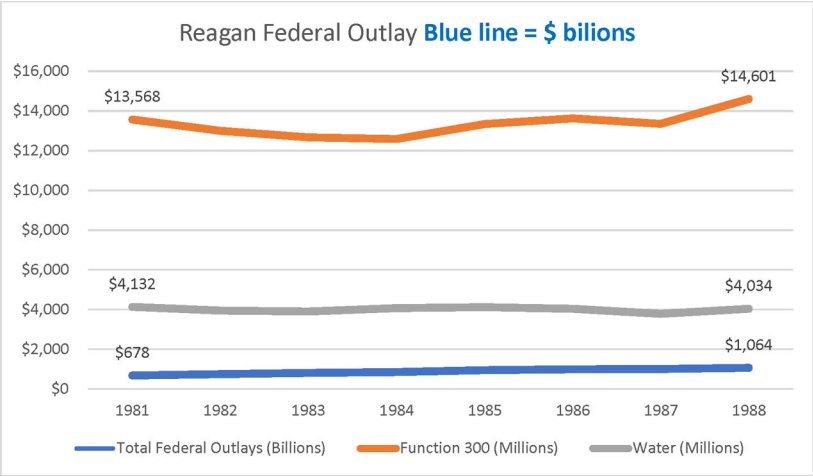

JFK/LBJ Percentage of Federal Outlays
2.5%
2.0%
1.5%
1.0%
0.5%
0.0%
1.8%
1.6%
1.2%
0.9%
1962
1963
1964
1965
1966
1967
1968
Function 300
Water

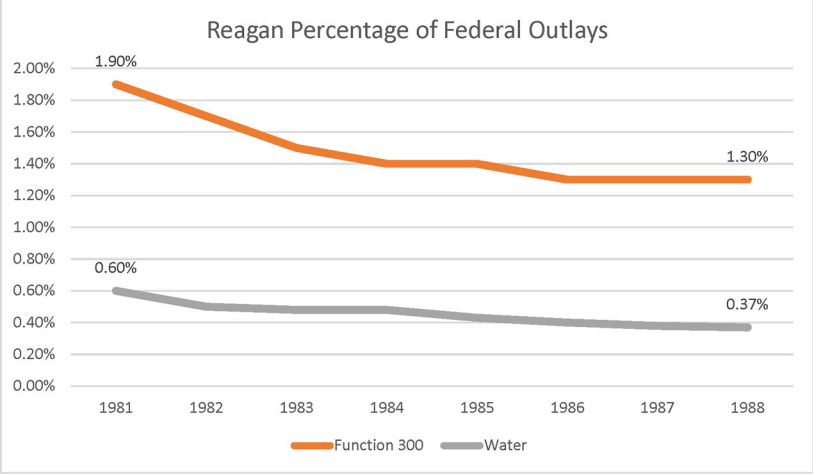

Nixon/Ford Federal Outlays Blue line = $ billions
$9,000
$8,000
$7,000
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0
$8,184
$2,900
$2,742
$1,591
$183
$371
1969
1970
1971
1972
1973
1974
1975
1976
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)

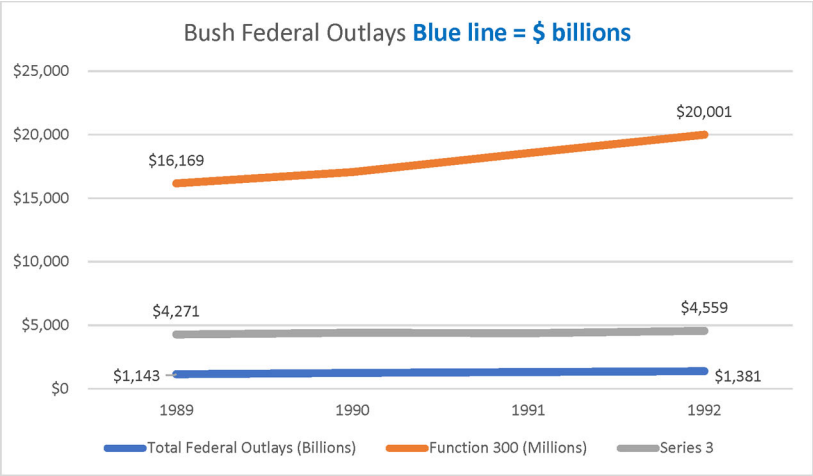

Nixon/Ford Percentage of Federal Outlays
2.5%
2.0%
1.5%
1.0%
0.5%
0.0%
2.2%
1.6%
0.8%
0.7%
1969
1970
1971
1972
1973
1974
1975
1976
Function 300
Water

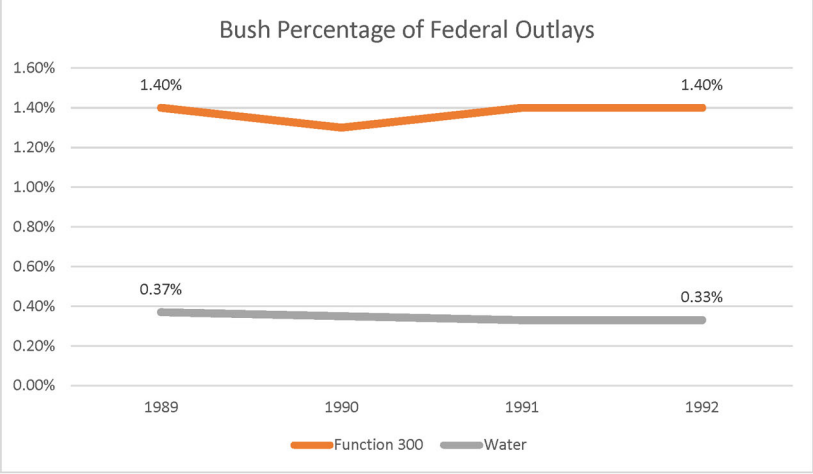

Carter Federal Outlays Blue line = $ billions
$16,000
$14,000
$12,000
$10,000
$8,000
$6,000
$4,000
$2,000
$0
$10,032
$13,858
$3,213
$4,223
$409
$590
1977
1978
1979
1980
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)

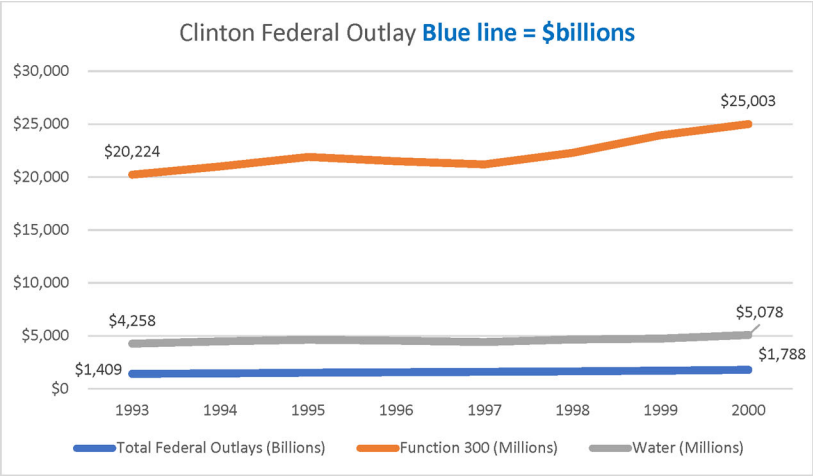

Carter Percentage of Federal Outlays
3.0%
2.5%
2.0%
1.5%
1.0%
0.5%
0.0%
2.4%
2.3%
0.8%
0.7%
1977
1978
1979
1980
Function 300
Water

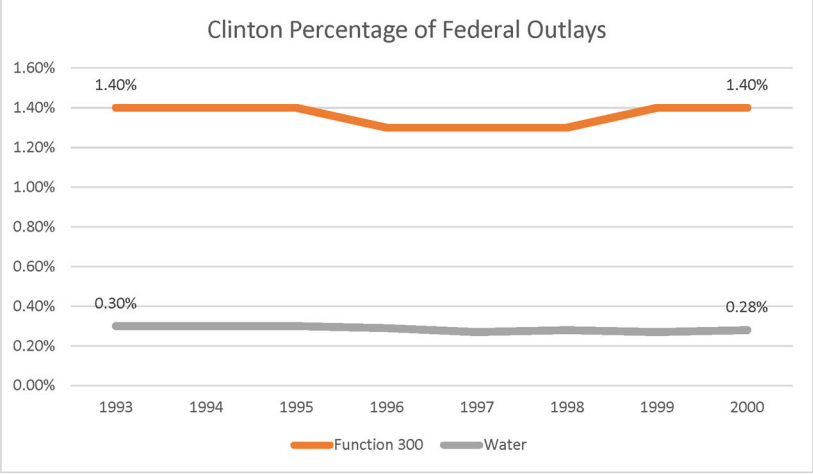

Reagan Federal Outlay Blue line = $ bilions
$16,000
$14,000
$12,000
$10,000
$8,000
$6,000
$4,000
$2,000
$0
$13,568
$14,601
$4,132
$4,034
$678
$1,064
1981
1982
1983
1984
1985
1986
1987
1988
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)

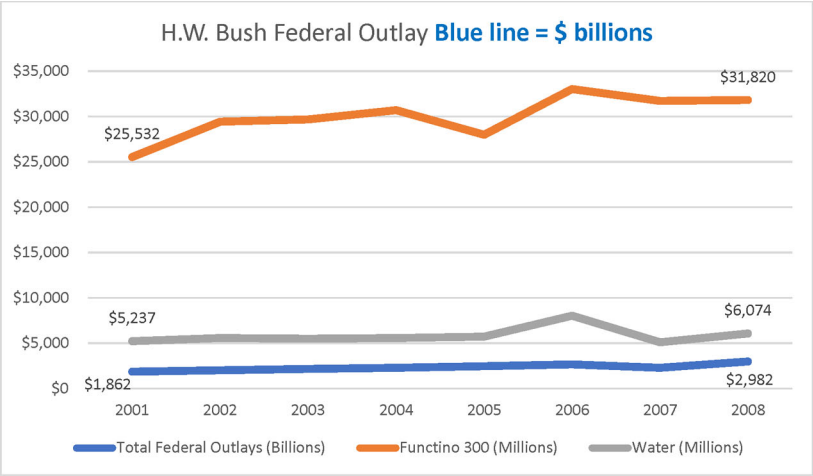

Reagan Percentage of Federal Outlays
2.00%
1.80%
1.60%
1.40%
1.20%
1.00%
0.80%
0.60%
0.40%
0.20%
0.00%
1.90%
1.30%
0.60%
0.37%
1981
1982
1983
1984
1985
1986
1987
1988
Function 300
Water

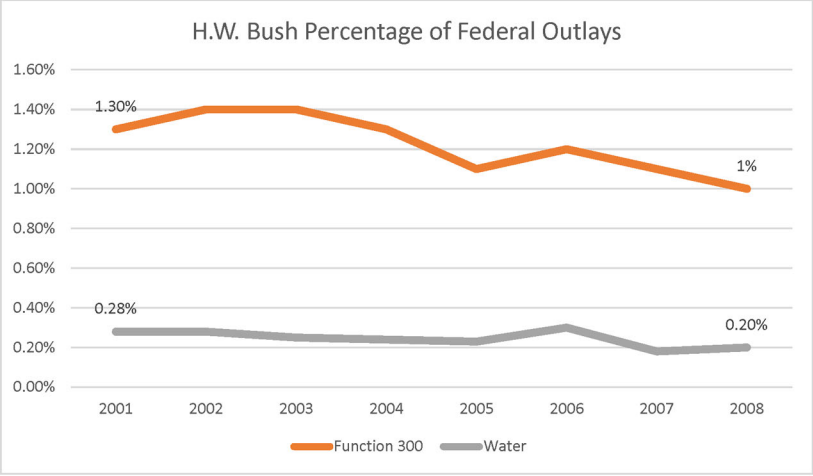

Bush Federal Outlays Blue line = $ billions
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$16,169
$20,001
$4,271
$4,559
$1,143
$1,381
1989
1990
1991
1992
Total Federal Outlays (Billions)
Function 300 (Millions)
Series 3

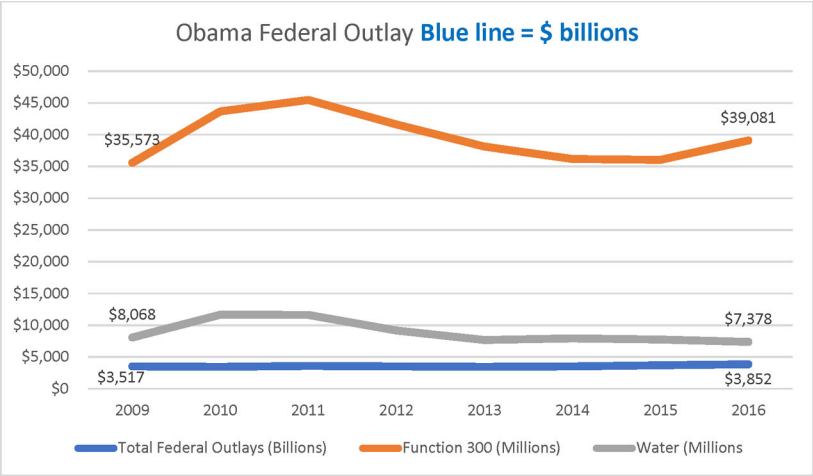

Bush Percentage of Federal Outlays
1.60%
1.40%
1.20%
1.00%
0.80%
0.60%
0.40%
0.20%
0.00%
1.40%
1.40%
0.37%
0.33%
1989
1990
1991
1992
Function 300
Water

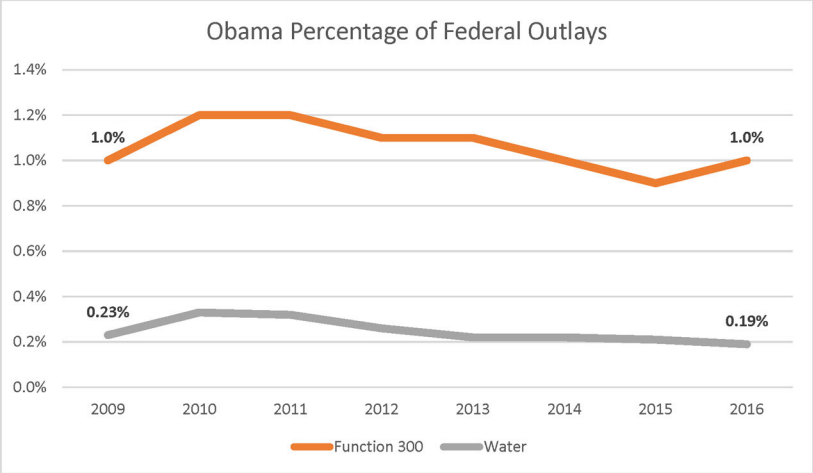

Clinton Federal Outlay Blue line = $billions
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$20,224
$25,003
$4,258
$5,078
$1,409
$1,788
1993
1994
1995
1996
1997
1998
1999
2000
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)

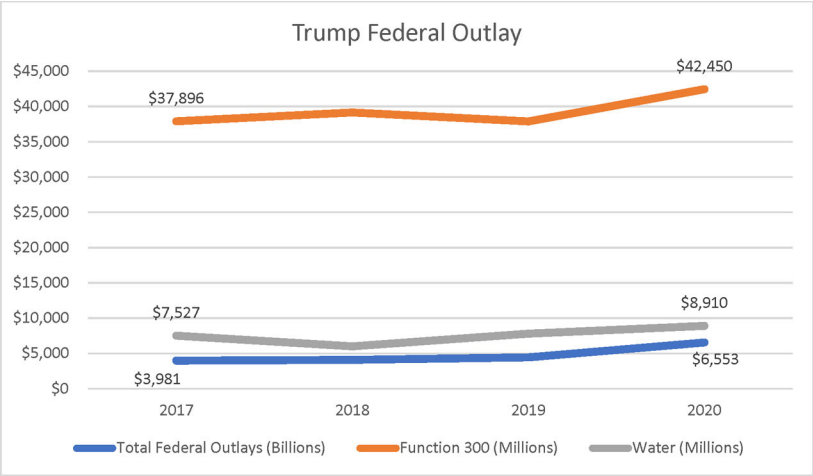

Clinton Percentage of Federal Outlays
1.60%
1.40%
1.20%
1.00%
0.80%
0.60%
0.40%
0.20%
0.00%
1.40%
1.40%
0.30%
0.28%
1993
1994
1995
1996
1997
1998
1999
2000
Function 300
Water

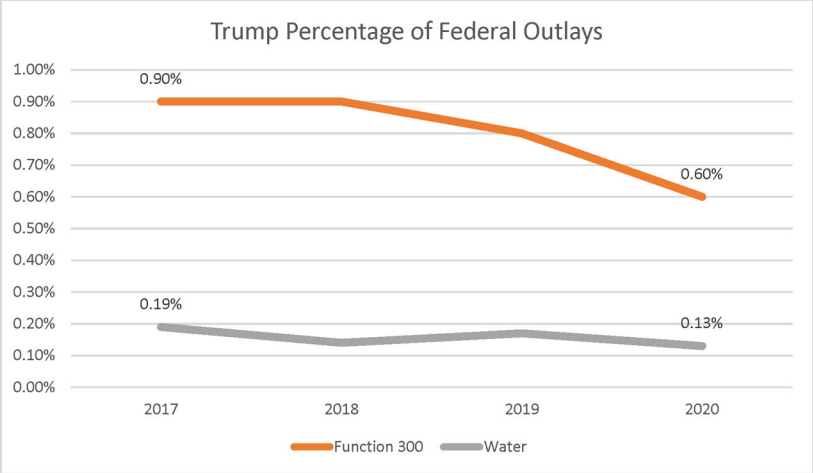

H.W. Bush Federal Outlay Blue line = $ billions
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$25,532
$31,820
$5,237
$6,074
$1,862
$2,982
2001
2002
2003
2004
2005
2006
2007
2008
Total Federal Outlays (Billions)
Functino 300 (Millions)
Water (Millions)

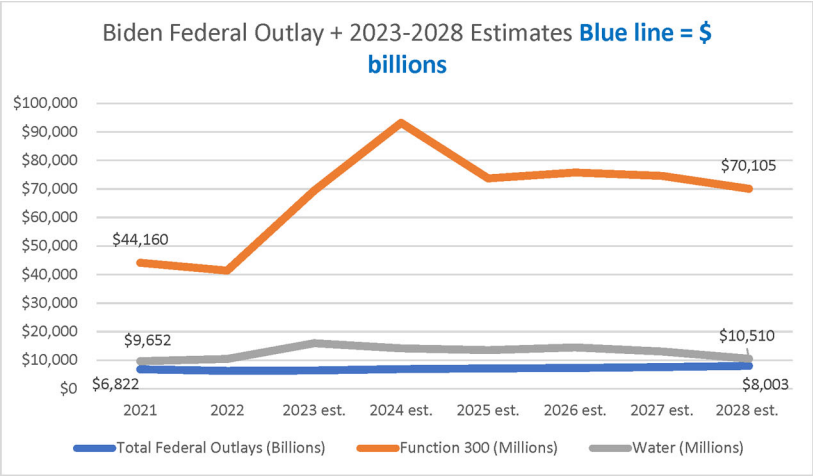

H.W. Bush Percentage of Federal Outlays
1.60%
1.40%
1.20%
1.00%
0.80%
0.60%
0.40%
0.20%
0.00%
1.30%
1%
0.28%
0.20%
2001
2002
2003
2004
2005
2006
2007
2008
Function 300
Water

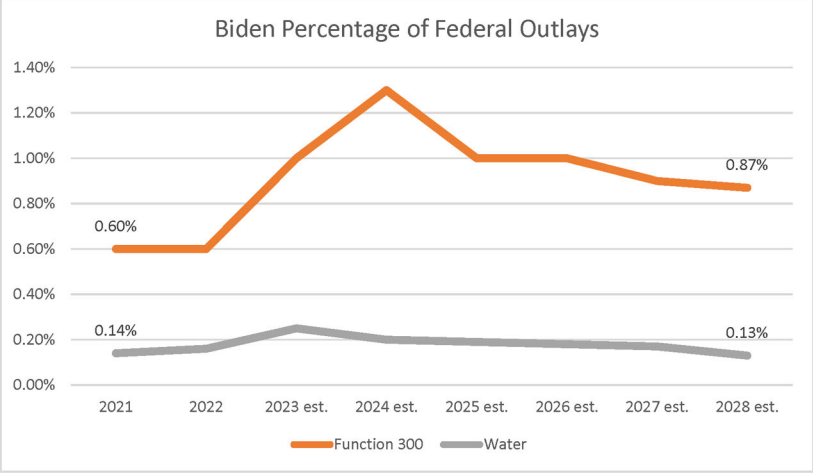

Obama Federal Outlay Blue line = $ billions
$50,000
$45,000
$40,000
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$35,573
$39,081
$8,068
$7,378
$3,517
$3,852
2009
2010
2011
2012
2013
2014
2015
2016
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions


Obama Percentage of Federal Outlays
1.4%
1.2%
1.0%
0.8%
0.6%
0.4%
0.2%
0.0%
1.0%
1.0%
0.23%
0.19%
2009
2010
2011
2012
2013
2014
2015
2016
Function 300
Water


Trump Federal Outlay
$45,000
$40,000
$35,000
$30,000
$25,000
$20,000
$15,000
$10,000
$5,000
$0
$37,896
$42,450
$7,527
$8,910
$3,981
$6,553
2017
2018
2019
2020
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)


Trump Percentage of Federal Outlays
1.00%
0.90%
0.80%
0.70%
0.60%
0.50%
0.40%
0.30%
0.20%
0.10%
0.00%
0.90%
0.60%
0.19%
0.13%
2017
2018
2019
2020
Function 300
Water


Biden Federal Outlay + 2023-2028 Estimates Blue line = $ billions
$100,000
$90,000
$80,000
$70,000
$60,000
$50,000
$40,000
$30,000
$20,000
$10,000
$0
$44,160
$70,105
$9,652
$10,510
$6,822
$8,003
2021
2022
2023 est.
2024 est.
2025 est.
2026 est.
2027 est.
2028 est.
Total Federal Outlays (Billions)
Function 300 (Millions)
Water (Millions)


Biden Percentage of Federal Outlays
1.40%
1.20%
1.00%
0.80%
0.60%
0.40%
0.20%
0.00%
0.60%
0.87%
0.14%
0.13%
2021
2022
2023 est.
2024 est.
2025 est.
2026 est.
2027 est.
2028 est.
Function 300
Water

	Total Federal Outlays Billions $		Function 300 - % Millions $	% of fed. outlays	Water $ - % Millions $	%
1962	106	JFK	2,044	1.8	1,290	1.2
1963	111		2,251	2	1,448	1.3
1964	118	LBJ	2,364	1.9	1,461	1.2
1965	118		2,531	2.1	1,546	1.3
1966	134		2,719	2	1,704	1.2
1967	157		2,869	1.7	1,685	1.1
1968	178		2,988	1.6	1,644	.9
1969	183	Nixon	2,900	1.6	1,591	.8
1970	195		3,065	1.5	1,514	.7
1971	210		3,915	1.8	1,768	.8
1972	230		4,241	1.8	1,948	.8
1973	245		4,775	1.9	2,221	.9
1974	269	Ford	5,697	2.1	2,200	.8
1975	332		7,346	2.2	2,608	.8
1976	371		8,184	2.2	2,742	.7
1977	409	Carter	10,032	2.4	3,213	.8
1978	458		10,983	2.3	3,431	.7
1979	504		12,135	2.4	3,853	.7
1980	590		13,858	2.3	4,223	.7

1981	678	Reagan	13,568	1.9	4,132	.6
1982	745		12,998	1.7	3,948	.5
1983	808		12,672	1.5	3,904	.48
1984	851		12,586	1.4	4,070	.48
1985	946		13,345	1.4	4,122	.43
1986	990		13,628	1.3	4,041	.4
1987	1,004		13,355	1.3	3,783	.38
1988	1,064		14,601	1.3	4,034	.37
1989	1,143	Bush 1	16,169	1.4	4,271	.37
1990	1,252		17,055	1.3	4,401	.35
1991	1,324		18,544	1.4	4,366	.33
1992	1,381		20,001	1.4	4,559	.33
1993	1,409	Clinton	20,224	1.4	4,258	.3
1994	1,461		21,000	1.4	4,488	.3
1995	1,515		21,889	1.4	4,625	.3
1996	1,560		21,503	1.3	4,536	.29
1997	1,601		21,201	1.3	4,411	.27
1998	1,652		22,278	1.3	4,647	.28
1999	1,701		23,943	1.4	4,725	.27
2000	1,788		25,003	1.4	5,078	.28
2001	1,862	Bush 2	25,532	1.3	5,237	.28
2002	2,010		29,426	1.4	5,570	.28
2003	2,159		29,667	1.4	5,492	.25
2004	2,292		30,694	1.3	5,571	.24
2005	2,471		27,983	1.1	5,726	.23
2006	2,655		33,025	1.2	8,033	.3
2007	2,728		31,721	1.1	5,104	.18
2008	2,982		31,820	1	6,074	.2

2009	3,517	Obama	35,573	1	8,068	.23
2010	3,457		43,667	1.2	11,662	.33
2011	3,603		45,473	1.2	11,621	.32
2012	3,526		41,631	1.1	9,178	.26
2013	3,454		38,145	1.1	7,675	.22
2014	3,506		36,171	1	7,912	.22
2015	3,691		36,033	.9	7,760	.21
2016	3,852		39,081	1	7,378	.19
2017	3,981	Trump	37,896	.9	7,527	.19
2018	4,109		39,141	.9	6,009	.14
2019	4,446		37,884	.8	7,793	.17
2020	6,553		42,450	.6	8,910	.13
2021	6,822	Biden	44,160	.6	9,652	.14
2022	6,273		41,389	.6	10,446	.16
2023 est.	6,371		69,400	1	15,949	.25
2024 est.	6,882	election	93,175	1.3	14,192	.2
2025 est.	7,090		73,738	1	13,490	.19
2026 est.	7,293		75,787	1	13,452	.18
2027 est.	7,589		74,539	.9	13,028	.17
2028 est.	8,003		70,105	.87	10,510	.13

Presidential Rankings by Function 300 and Water percent of Total Outlays

Carter	2.4	JFK/LBJ	1.02
JFK/LBJ	1.87	Nixon/Ford	.78
Nixon/Ford	1.77	Carter	.72
Reagan	1.48	Reagan	.48
Clinton	1.46	Bush 1	.34
Bush 1	1.37	Clinton	.28
Bush 2	1.22	Bush 2	.24
Obama	1.06	Obama	.24
Trump	.80	Trump	.15
Biden 2021-23	.71	Biden 2021-23	.16
Estimate 2024-28	1.01	Estimate 2024-28	.17

Senator CAPITO. Thank you.

Now, I would like to recognize Senator Mullin to introduce our next witness.

Senator MULLIN. Thank you. Shellie is no stranger to this committee. She has been here twice, actually, before. She was here in 2011 and 2021, both times introduced by my predecessor, Senator Inhofe, which we miss him here on the committee.

You have your son, Andrew, with you, is that correct?

Mr. CHARD. Yes.

Senator MULLIN. You are a senior at the University of Oklahoma, correct? Studying the same, following your mom's footsteps, I guess?

Mr. CHARD. Not too closely. I am in Public Administration.

Senator MULLIN. Well, I know your mom is a bright and proud graduate of the University of Oklahoma, too. We sure appreciate you here.

Just to give you a little bit about her background, not only has she testified twice in front of this committee, but she has 31 years' experience implementing the Clean Water Act, Safe Drinking Water, and comparable State statutes and operator certification programs, which I was actually a certified operator for many years for wastewater and water. I would imagine there are not too many Senators that have that on their resume.

She served on the board of directors for the Association of Clean Water Administration, the Groundwater Protection Council, Association for State Drinking Water Administrators, and is currently on the board of the Water Environment Federation. As a lifelong Oklahoman, we are extremely proud to have you here.

And I got to say this, got to put it out there, we worked with DEQ, Department of our Environmental Quality, for many years in our company. I never had the privilege of working with you, I think you had only been there 11 years. And it was always a pleasure. You brought, it really is why we need to make sure that a lot of these regulations are on a State level. There is a big difference between working with DEQ and the EPA. You just, you get it, it is your home, you live there. And you bring a more human touch to it, because it is not always just simply black and white. There has to be, in water terms, a little bit of gray every now and then, to find the final solutions.

So thank you so much for being here, and all our witnesses. Thank you for being here. I appreciate it. I yield back.

Senator PADILLA.

[Presiding.] Thank you. Your statement, please.

STATEMENT OF SHELLIE R. CHARD, DIRECTOR, WATER QUALITY DIVISION, OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

Ms. CHARD. Thank you very much, Senator Mullin, for that very nice introduction. I am so happy to be able to be here before you today. So good morning, all committee members, those who are not able to be here with us, as well as those who are in the room with us. Thank you so much for this opportunity. It is such an important issue, and I am happy to be here to discuss how we can best

address the infrastructure funding needs for our small, rural, disadvantaged and underserved communities.

I am Shellie Chard. I am the Water Quality Division Director for Oklahoma DEQ. In addition to my activities in the State and regional area, I have had the opportunity to participate on the national level with various organizations all working to assist our communities with their water and wastewater needs and our work force development, which is critically important.

Today I want to share with you my perspectives really on three main areas. One, specifically, the obstacles that we see our small, rural, underserved and disadvantaged communities when they are seeking Federal funding. I want to talk a little bit about the gaps that exist in the funding needs of these communities versus what is available or an eligible expense for them.

Also I want to share a little bit about what Oklahoma has been able to do to address some of these obstacles and to help improve infrastructure for all of our citizens.

Something I think that is really important that we all remember, and that is that the setting of Federal standards do not protect public health and the environment. It is the implementation of those standards that protects public health and the environment. For small, rural, disadvantaged and underserved communities, the Federal infrastructure is key to their ability to comply with regulatory limits and protect their way of life. In addition, this funding allows these communities to compete for new and expanding industries which provide opportunities for economic growth and provide opportunities for residents to work in their home town and to support other local businesses.

In 2021, the American Society of Civil Engineers released its Infrastructure Report Card, which graded drinking water infrastructure a C-minus and wastewater infrastructure a D-plus. This illustrates the condition of important water and wastewater infrastructure.

While there are signs of improvement, including increased use of asset management in the industry, innovative technologies that are being introduced, restorative and preventive actions by water and wastewater systems, these take money and a properly trained work force. Econmoic prosperity is dependent on sustained infrastructure investment at all levels of government. Delaying investments in water and wastewater infrastructure increases capital costs in the long run and elevates the risk of catastrophic failures.

Oklahoma is a State that encompasses approximately 70,000 square miles and has a population just under 4 million people. Approximately 75 percent of those residents are served by one of the 1,274 public water supply systems and one of the 772 publicly owned treatment works to treat their wastewater. Many of these water and wastewater systems serve populations under 500. Without the Federal infrastructure funding, they would be unable to provide water and sanitation services to their citizens.

These vulnerable communities face many obstacles in securing infrastructure funding. These include the need to navigate the various requirements of the different funding programs offered, the need to pay for engineering and planning services prior to making application, and confusion about how to comply with certain acts

like Build America Buy America Act, and the requirement that emergent contaminants be identified prior to being eligible for funding.

There are important needs that Federal funding could be expanded to include, such as certain operation and maintenance costs, planning and monitoring costs, and industrial pre-treatment facility construction. The State of Oklahoma helps to address these obstacles and gaps in cooperation and collaboration with key partners. The funding agency coordination team, composed of State, Federal, and tribal funding agencies, meets with communities to help them build their funding package. Contracts with Oklahoma Rural Water Association consultants and agreements with tribal nations allow for low-cost or no-cost technical assistance.

One key policy point that we can all agree on is that all levels of government must come together to fund infrastructure. It is necessary to protect public health, the environment and economic prosperity.

Thank you for the opportunity to come before you today and participate in this important conversation. I look forward to working with you, the Federal agencies and all stakeholders as we work to protect public health and the environment and prosperity. Thank you.

[The prepared statement of Ms. Chard follows:]

Testimony of

Shellie R. Chard

Water Quality Division Director, Oklahoma Department of Environmental Quality

to the

Senate Committee on Environment and Public Works

Accessing Clean Water Infrastructure Assistance: Small, Rural, Disadvantaged and Underserved Communities

November 8, 2023

Testimony

Thank you, Chairman Carper, Ranking Member Capito, Senator Mullin and members of the committee for this opportunity to appear before you and discuss how we can best address the infrastructure funding needs facing small, rural, disadvantaged and underserved communities.

My name is Shellie Chard, and I am the Water Quality Division Director of the Oklahoma Department of Environmental Quality where I oversee the drinking water, wastewater, stormwater, operator certification and training, and funding programs. In addition to my role at Oklahoma DEQ, I am a Past-President of the Association of State Drinking Water Administrators (ASDWA) and Association of Clean Water Administrators (ACWA), a past Board of Trustee member for the Water Environment Federation, Treasurer of the Ground Water Protection Council Board of Directors, and a member of the National Drinking Water Advisory Council. Today, I will discuss my perspectives on:

- Obstacles faced by small, rural, disadvantaged and underserved communities when seeking federal infrastructure funding;
- Gaps in infrastructure funding project eligibility and what is needed by small, rural, disadvantaged and underserved communities; and
- Oklahoma's approach to addressing certain obstacles faced by small, rural, disadvantaged and underserved communities.

Background

The setting of federal compliance standards does not protect public health and the environment. It is the implementation of these standards that achieve the desired protections. For small, rural, disadvantaged and underserved communities federal infrastructure funding is key to their ability to comply with regulatory limits and protect their way of life. In addition, this funding allows these communities to compete for new or expanding industries which provide opportunities for economic growth and provide opportunities for residents to work close to home and support other local businesses.

On March 3, 2021, the American Society of Civil Engineers (ASCE) released its Infrastructure Report Card.[1] ASCE graded drinking water infrastructure a C- and wastewater infrastructure a D+. Water and wastewater infrastructure is aging and substantially underfunded. According to the report, "there is a water main break every two minutes, and an estimated 6 billion gallons of treated water lost each day in the U.S."[2] While there are signs of improvement including increased use of asset management in the industry and innovative technologies being introduced, restorative and preventative actions by water and wastewater systems take money and a properly trained workforce. Economic prosperity is dependent on sustained infrastructure investment at all levels of government. Delaying investments in water and wastewater infrastructure increases capital costs and the risk of catastrophic failures.

[1] America's Infrastructure Report Card 2021 | GPA: C-
[2] *Ibid.*

Oklahoma is a state that encompasses approximately 70,000 square miles and has a population of just under four million people. Approximately 3.1 million of those residents are served by one of the 1274 public water supply systems and slightly under 3 million are served by one of the 772 publicly owned treatment works. Many of these water and wastewater systems serve populations under 500. Without the federal infrastructure funding they would be unable to provide vital water and sanitation services to their citizens.

Successes and Recommendations

More than three decades ago, Congress established the Clean Water State Revolving Funds as federally subsidized loan programs to provide affordable financing for municipal water infrastructure for the protection of public health and the environment. Since then, the Clean Water SRFs have used $52 billion in federal capitalization grants to generate $163 billion in financial assistance for more than 46,000 clean water infrastructure projects in communities across the nation. Because of Congress' foresight and fiscal responsibility, the Clean Water SRFs are generating a recurring, renewable source of revenue to meet the never-ending need to repair, rehabilitate and replace aging water infrastructure. As of 2022, loan repayments permanently revolving in the Clean Water SRFs topped $63 billion.[3]

Obstacles to Securing Funding

Navigating the funding options and application process can be difficult for small, rural, disadvantaged and underserved communities. Each funding agency has different qualification and application processes. Without specific assistance, these communities may not develop the most beneficial funding package. (See discussion below under Oklahoma's Approach for the Funding Agency Coordination Team) This could lead to higher loan to grant ratio or higher interest rates. Congress can assist these communities by continuing to provide program implementation costs to the SRF agencies so that they can continue to provide application assistance to funding applicants.

In order to determine what infrastructure project is needed, the small, rural, disadvantaged or underserved community must hire an engineer to evaluate the treatment system and associated pumps and pipes. They must pay for these costs upfront before they can apply for funding. In some states, these systems can apply for a planning grant that can pay the engineering costs but again an application is required. Congress could provide language in an appropriation bill or program authorization that would establish funding for these necessary engineering services.

Similar to procuring engineering services, another hurdle that systems must overcome is related to sampling and laboratory analysis to identifying the presence of an emerging contaminant. If a small, rural, disadvantaged and underserved community has monitored and identified a particular contaminant, the SRFs can fund additional sampling to identify the extent of the contamination. However, if the contaminant has not already been detected through a study, funding is not available. Congress could clarify that the Emerging Contaminants funding can be used for the initial sampling study.

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[3] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

Water and wastewater systems often struggle to comply with the Build America Buy American Act (BABAA) and in some cases prevent these small systems from applying due to fear of failing to comply with the provisions. The requirements for compliance are different for the various funding programs including funding programs in the same agency. In testimony[4] before the US House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, Lori Johnson on behalf of the Council of Infrastructure Finance Authorities, included recommendations the Congress could address that would strengthen the implementation of and compliance with BABAA for all borrowers. These recommendations include:

- Leveling the playing field by applying BABAA consistently across funding programs;
- Develop clear and consistent standards for funding recipients to demonstrate compliance with BABAA;
- Clarify that compliance with the American Iron and Steel Act satisfies compliance with BABAA; and
- Codifying the existing BABAA waivers for the SRF.

There are an entire set of obstacles that are driven by the implementation of the funding programs by the Environmental Protection Agency (EPA). Communities and state program staff see and hear announcements of funding that Congress has made available. The small, rural, disadvantaged and underserved communities immediately start reaching out to find out what the requirements are for those funds. It can be a significant amount of time after the funding allocation is announced before states receive the information on what is required for EPA to award the funding to the state SRF program. The states often wait months following this announcement to receive the guidance documents or requirements for the eligible projects. The state SRF programs must wait until they have this information from EPA before they can begin the outreach to eligible systems to help them apply for the much-needed infrastructure funding.

Congress could improve the ability for SRFs to award funding to small, rural, disadvantaged and underserved communities by including language in an appropriation or authorization act that codifies the concept that states have the authority to establish their own criteria of needed infrastructure projects. The Clean Water Act Section 303(c) (33 U.S.C. 1313 (c)) already allows for states to establish state specific Water Quality Standards. Therefore, Congress has already established that state specific criteria is appropriate.

Funding Gaps

Small, rural, disadvantage and underserved communities often struggle with keeping up with the ever-evolving regulations. Due to lack of historical infrastructure investment, the cost to comply with current standards, and lacking the staff or experience to track the status of future requirements, these systems are spending limited infrastructure funding to meet today's standards rather than being able to plan for the future. Many times, these vulnerable systems will obtain a 20-year loan in order to comply with the current regulatory conditions. When the

[4] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

new standards take effect or when they are required to comply at the next five-year permit renewal cycle, these systems may have many years left on the existing loan, are at their debt limit and cannot obtain grant funding for the needed plant upgrades. There are two potential actions Congress could take to assist communities:

- Extend the National Pollutant Discharge Elimination System permit duration from five years to ten years which could reduce the likelihood of new regulatory compliance limits; and
- Require EPA to consider an approach to Clean Water Act compliance similar to the Safe Drinking Water Act where small systems have delayed or staggered compliance dates or there are different compliance criteria for small systems.

Many municipal wastewater treatment facilities are required to implement a pretreatment program if they treat the industrial wastewater generated by categorical, have an industry that discharges more than 25,000 gallons per day to the municipal treatment system, or contributes more than five percent of a treatment plant's flowrate.[5] The pretreatment facility is typically owned and operated by the industry. EPA has allowed communities to borrow funds from the SRF and make a subsequent loan or grant to the industry. However, these projects are required to have energy efficiencies as part of their design and construction which can increase costs. Small, rural, disadvantaged and underserved communities could benefit if through a Congressional act, Congress:

- Allowed these pretreatment projects to be funded directly to the industry; and
- Encourage but did not require energy efficiency requirements in the projects.

Not only would these program modifications assist with compliance for these small systems and improve environmental protection, but it could also improve the likelihood that an industry could locate or expand in the community which would increase the long-range financial sustainability.

As drought conditions intensify and expand to traditional water rich areas of the country[6], more water supplies and communities are experiencing water shortages. Alternative water sources like municipal wastewater treatment facilities are becoming part of the conversation for securing needed water for the future. Since the EPA does not have regulations for water reuse, SRF funding for these projects are only eligible if the state has reuse regulations. If a state does not have reuse regulations in place, these important projects are not eligible for SRF funding. This is an area that there must be greater focus in the future. Congress could state in any future authorizing bills that water reuse projects are specifically eligible projects.

Additionally, federal infrastructure money funds primarily capital projects and limited planning, monitoring and engineering services. A significant cost for small, rural, disadvantaged and underserved communities is the operation and maintenance of their wastewater treatment facility and associated pipes and pumps. Congress could determine that these costs are eligible for federal funding for communities that meet a prescribed standard.

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[5] Introduction to the National Pretreatment Program https://www.epa.gov/sites/default/files/2015-10/documents/pretreatment_program_intro_2011.pdf

[6] https://droughtmonitor.unl.edu/Maps/MapArchive.aspx

Finally, an issue that must be addressed moving forward is the impact of the increasing use of septic systems. Based on the Septic System Trends in Oklahoma report by the Oklahoma State University Extension Service published in June 2023[7], 49% of all newly constructed detached houses in Oklahoma are served by residential septic systems. This increase in septic tank installation at new residential construction can be attributed to the lack of capacity at existing facilities or their inability to fund service line extensions into newly developing areas.

While in many cases a private water well and a private residential wastewater system are good reliable options when public services are unavailable, there are operational challenges and considerations to ensure that the environment and public health are protected. One important use of federal and state infrastructure funding is to provide sewer service where it would otherwise not be available. As we move forward with a spotlight on emerging containments like per- and poly-fluoroalkyl substances (PFAS) and pharmaceutical products, it is important that all levels of government make the most efficient use of our collective fiscal resources to keep these chemicals out of the environment. Congress could identify the replacement of failing septic systems and authorize the payment of connection fees to assist small, rural, disadvantage and underserved communities in eliminating potential contamination sources and generating additional revenue from the new service connections.

Oklahoma's Approach

It is vital to recognize that in funding programs one size does not fit all. Each state must be able to adapt to their specific challenges. In order to best assist communities in obtaining needed funding, Oklahoma created the Funding Agency Coordination Team (FACT) in the early 2000s. The FACT was formed after discussing the frustrations expressed by facilities that every funding agency required different forms and different content in engineering reports. There were engineering services and associated fees for each different application. Additionally, many of the water and wastewater systems facing enforcement actions due to noncompliance did not know about the various funding options available to them. According to a GAO report[8] eight different federal agencies provide infrastructure funding to communities. The Oklahoma FACT is able to provide information on the funding programs. Additionally, the Oklahoma funding agencies and technical assistance providers met and reviewed all preliminary documents, program requirements and created forms to be used by applicants that would meet each agency's individual requirements. All funding agencies met with the Oklahoma FACT and came to an agreement on report contents and requirements. Each quarter facilities are invited to meet with the FACT based on funding needs. All funders from state, tribal, and federal agencies, the Oklahoma Rural Water Association and Oklahoma Municipal League meet with the representatives from water and wastewater systems and their consulting engineers to develop the most beneficial funding options. Without the continued funding from Congress to the federal agencies and the SRFs, Oklahoma FACT could not assist our systems in a manner that is cost

[7] https://extension.okstate.edu/fact-sheets/septic-system-trends-in-oklahoma.html#:~:text=Around%2050%25%20of%20houses%20built,of%20the%20last%20four%20years.

[8] GAO-13-451T

effective and allow communities to move more quickly to correct noncompliance and better protect public health and the environment.

One of the most valuable tools that has been used to fund infrastructure projects is co-funding. Combining the SRF funding with other state, federal and tribal funding can make projects more affordable for small, rural, disadvantaged and underserved communities. In some cases, projects can be broken down into phases to access additional funding. Programs like the Oklahoma Rural Infrastructure Grant (RIG) program can pay for up to $100,000 of a project which can be used as part of the required match for federal loans or grants and pay for items that might not be eligible in a federal program.

An important program that Oklahoma Governor J. Kevin Stitt established is the *Strategic Alliance*. This program established a formal relationship between the state water and wastewater infrastructure agencies, regulatory programs, Oklahoma Rural Water Association and the Oklahoma Municipal League. By meeting regularly, making facility visits and developing tools, the *Strategic Alliance* assists small, rural, disadvantaged and underserved communities improve their operational efficiency, equipment maintenance, and record keeping in order to extend the useful life of their collection, distribution and treatment systems. Additionally, the information gathered on the asset management inventory and system mapping can provide valuable information that helps prepare infrastructure funding applications.

A tool that funding programs have used for many years are the partnerships with other agencies and technical assistance providers. In Oklahoma, contracts with Oklahoma Rural Water Association, Oklahoma State University Extension Service, and consulting firms are utilized to provide hands on assistance to help communities. This assistance ranges from rate studies to work to improve long term sustainable operation, quality training for operators, drought management and other system specific needs. Without the SRFs, this assistance would not be available to small, rural, disadvantaged and underserved communities.

Conclusion

Because of Congress' foresight and fiscal responsibility, the Clean Water SRFs are generating a recurring, renewable source of revenue to meet the never-ending need to repair, rehabilitate and replace aging water infrastructure. As of 2022, loan repayments permanently revolving in the Clean Water SRFs topped $63 billion[9]. This coupled with state programs leveraging the federal funding through the issuance of bonds and partnering with other state and tribal funding programs continue to provide additional needed infrastructure funding. As new regulatory compliance criteria and public health concerns continue to be developed, it is going to take extra efforts by both state and federal governments to ensure that all Americans are protected.

One key water policy point that we should be able to agree is that all levels of government must come together to fund water and wastewater infrastructure. It is necessary to protect public health, the environment, and economic prosperity.

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[9] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

Thank you for the opportunity to come before you to participate in this important conversation. I look forward to working with you, the federal agencies, and other stakeholders in a cooperative and collaborative manner as we work toward the same goals of strengthening our vital infrastructure to protect public health and the environment.

Senate Committee on Environment and Public Works
Hearing Entitled *"Accessing Clean Water Infrastructure Assistance: Small, Rural, Disadvantaged and Underserved Communities"*
November 8, 2023
Questions for the Record for Shellie R. Chard

Senator Wicker:

1. IIJA provided historic investments in drinking water and wastewater infrastructure to state-run programs because Congress recognizes that states and not the federal government are more successful at addressing the needs of individual communities. However, the EPA has prioritized projects based on the Biden Administration's environmental justice agenda rather than demonstrated infrastructure needs. My state of Mississippi fears that confusion over the definition of what qualifies as a "disadvantaged" or "environmental justice" community can result in arbitrary actions. Is this something that you have experienced in Oklahoma?

    a. In your experience, do you think that the flexibility provided to states in IIJA to choose projects that make the most sense for their communities is important?

    Yes, flexibility is of critical importance.

    b. Why or why not?

    An important tool for states is to promulgate their own definition of a "disadvantaged community" under the Safe Drinking Water Act which defines disadvantaged community as the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. Oklahoma adopted the following definition in OAC 252:633:

    > "A 'Disadvantaged Community' means those communities which serve a population whose Median Household Income (MHI) is greater than 80% but less than 90% of the national MHI according to the United States Census Bureau/American Community Survey. Communities serving population whose MHI is less than 80% of the national MHI according to the United States Census Bureau/American Community Survey will be designated as 'Severely Disadvantaged Communities' and hence will receive 60 priority points instead of the 40 points reserved for Disadvantaged Communities. MHI is based on the most recent 5-year average of median household income from United States Census Data or through a household income survey acceptable to DEQ."

States are more familiar than EPA in understanding the needs of their water systems as well as overall impacts of projects. Oklahoma utilizes a ranking system which is documented on a standardized form to identify those projects addressing the most needs. The projects ranking highest and addressing critical public health and environmental protection (and meet the state's disadvantaged definition) do not always overlap with EPA's environmental justice tool.

In addition, it can often be difficult to identify water systems in disadvantaged or environmental justice areas outside of cities and towns. Oklahoma has a method to determine disadvantaged status for these water systems, which is not necessarily captured in EPA's EJ tool.

The intimate and historical knowledge states have regarding their water systems is a crucial component in identifying funding projects, which again is not necessarily captured in EPA's EJ tool. It is important states be given the flexibility to identify projects to receive funding. By having a local "boots on the ground" approach, there is greater likelihood that a project will result in the highest public health and environmental protection impacts.

To date, Oklahoma water funding and permitting actions have not experienced issues with confusion based on whether a community is "disadvantaged" or is an "EJ" community.

2. CERCLA liability creates a significant risk for water and wastewater systems, also known as "passive receivers" because water utilities do not create PFAS contamination, nor profit from it, rather they merely convey the substance. Water and wastewater utilities are particularly vulnerable to CERCLA liabilities because of their essential and growing role in receiving and filtering PFAS out of drinking water and wastewater. What are some of the unique challenges facing water and wastewater systems, particularly small and rural systems, if PFAS is designated as a "hazardous substance" and therefore liable for costs associated with CERCLA response?

   This question gets to the heart of the multitude of the challenges drinking water and wastewater utilities are facing. Under the soon-to-be-finalized Safe Drinking Water Act (SDWA) Maximum Containment Level (MCL) for PFAS, drinking water utilities will need to reduce PFAS to nearly indetectable levels, which will create both high costs to ratepayers as well as large amounts of residual materials contaminated with PFAS that will need to be disposed of for the utility to be in compliance with the SDWA. A recent report by the American Water Works Association estimates that drinking water utilities will need to invest more than $50 billion to install and operate treatment technologies over the next 20 years to be in compliance with the new PFAS MCL levels. A report by the Association of Metropolitan Water Agencies also found that drinking water utilities will need to increase rates to ratepayers by approximately $520 per year for utilities serving 3,300 – 10,000 households and by $1,700 per year for utilities serving 500 – 1,000 households.

Wastewater agencies face similar cost and treatment challenges. Once the MCL is finalized, Clean Water Act (CWA) regulations are expected to reduce PFAS levels in wastewater treatment plant discharge water, known as effluent, and biosolids materials disposed of by wastewater agencies, both of which are permitted activities under the National Pollutant Discharge Elimination System (NPDES) program. A National Association of Clean Water Agencies study found that operational costs at Publicly Owned Treatment Works will increase by up to 60% as a direct result of new PFAS regulations. Similarly, a recent study by the State of Minnesota Pollution Control Agency showed total wastewater costs to remove PFAS to be between $14 billion and $28 billion in Minnesota alone. Once again, local ratepayers will be expected to shoulder the vast majority of these costs, which will disproportionately impact lower income households and smaller rural communities.

The regulatory and financial burdens detailed above do not take into consideration PFAS being designated a "hazardous substance" under CERCLA, which EPA has indicated they intend to do. Once that occurs, drinking water utilities and wastewater utilities will face several significant additional challenges:

- Utilities will be potentially liable for any sites where they previously disposed PFAS contaminated materials, such as at landfills where used Granular Activated Carbon from drinking water filtration and biosolids are disposed, or fields where biosolids were spread in compliance with a utility's NPDES permit.
- Future disposal of PFAS contaminated material will be immensely more expensive because they will need to be taken to expensive hazardous waste disposal facilities, of which there are few options and utilities will need to haul them long distances, which has increased transportation costs.
- Even if the EPA uses enforcement discretion not to pursue legal action against utilities, they are still vulnerable to lawsuits. Since CERCLA is a joint and several liability law, it would be expected that the manufacturers and users of PFAS who are liable for clean-up costs will utilize the Potential Responsible Party (PRP) provision of the law to defray their clean-up costs by filing suit against utilities because their PFAS passed through the utilities' treatment works and the utility disposed of it. This has already occurred in New York, New Jersey, California, and Wisconsin.
- Local ratepayers will bear the burden of these increased costs and impacts upon the community. The increased federal funding through the Infrastructure Investment and Jobs Act, while historic, is insufficient to address the magnitude of PFAS treatment costs and generated high PFAS waste generated during treatment much less any clean-up costs. Utilities will need to spend significant financial and personnel resources to defend against CERCLA PRP liability plus any third-party lawsuits. Unfortunately, small and rural systems have fewer resources to defend themselves against legal suits. As noted above, ratepayers are already facing significant rate increases for drinking water and wastewater utilities to remain in compliance with SDWA and CWA regulations.

Senator Sullivan:

1. Infrastructure Investment and Jobs Act funding for Lead Service Line Replacement requires that exactly 49% of grant funds be used to provide subsidized loans or grants. Does the lack of flexibility in the use of these funds impact access to disadvantaged communities?

   Because Oklahoma has a broad definition for disadvantaged communities, the lack of flexibility for the subsidy portion has had minimal impact on the number of water and wastewater systems that are eligible to apply.

   It has been challenging to get small, rural and disadvantaged water systems to utilize the loan portion of this funding even when receiving partial subsidy. This is due to the lack of expertise to complete the applications or the inability to take on additional debt. Some states like Oklahoma work with larger water systems to apply for the low interest loans through the Drinking Water State Revolving Fund in order to increase the percentage of loan funds to ensure that a greater percentage of the funding for small, rural and disadvantaged water systems can be subsidized. Other step used to assist these systems include using set aside dollars to fund contacts to technical assistance providers to help small, rural and disadvantaged water systems complete all necessary documents.

Senator PADILLA. Thank you very much.

Thank you to all three witnesses. As you can tell, both Senators Carper and Capito have stepped away to other committees, and will be back momentarily. In the meantime, that provides an opportunity for me not just to preside, but to ask my questions first, followed by Senator Mullin.

Thank you all for your participation today. It is clearly an important topic that we care a lot about, the Clean Water State Revolving Fund, and what it means, particularly for our underserved communities across the Country. I think it is safe to say we all agree that there is no reason why anyone living in the wealthiest country in the world should lack access to clean, affordable water, water for drinking purposes, water for sanitation.

But it has evolved into a multi-jurisdictional, multi-committee, multi-agency challenge. But I am glad to see there is a collective commitment in the Senate to tackle it.

In California alone, there is more than 100,000 miles of sewer lines, more than 900 utility providers and treatment plants. That is why this last July, California initiated a first of its kind study in the State to assess the needs of California's wastewater systems over the next 40 years, including identifying the particular challenges faced by tribal, rural, and unincorporated communities.

What we know also is that wastewater should not be wasted water. Instead, we should see it as a critical resource that can be recycled as part of our drought resiliency strategies.

The burden of unsafe and unaffordable water disproportionately impacts low-income communities and communities of color. The data is clear. Many rural communities, including tribal communities, farm worker communities, and communities near sites of legacy industrial contamination practically pay twice for water: once for the contaminated water flowing through their taps and once again for the cost of bottled water that they have to rely on.

Unlike other forms of infrastructure, like bridges and roads, clean drinking water is not primarily funded by tax revenues. Instead, more than 90 percent of the average utility's revenues comes directly from constituents' water bills, their ratepayers.

While there are many important Federal grant and loan programs to help water systems offset costs that would otherwise overburden ratepayers, programs like WIFIA and the SRFs, not every water system is equipped to access these programs, whether due to staffing or other capacity challenges.

With all that being said, my first question is both for Ms. Morales-Pate and Mr. Byrum. In both of your testimoneys, you mentioned that small and disadvantaged communities lacked the resources or economies of scale to access SRF grants and loans. What specific policies would you suggest to make the SRFs more accessible to these communities? Ms. Morales-Pate?

Ms. MORALES-PATE. Thank you, Senator Padilla and members of the committee. Thank you for your question.

In my opinion, and having 20 years of experience, 12 of those years being a technical assistance provider, flexibility. Flexibility is the key, in my opinion, to being able to allow communities to use the non-traditional approaches. We cannot look at every community as being centralized the only solution. Because that is not only

not financially viable for a lot of us communities, but sometimes demographically makes no sense. So thinking outside of the box and funding outside of the box is important, in my opinion.

Mr. BYRUM. I agree with Ms. Morales-Pate in that there are communities that can take portions of their moneys in loans and then portions in grants. I do know of a situation where the money was tied to 70 percent grant and 30 percent loan. The water bill in this small community in Angelina County would have been over $90 a month for an area where the median income is way low.

So I think allowing some flexibility to the States to administer more of that in the grant stage would certainly help in those situations in Texas.

Senator PADILLA. A followup question: how helpful would a permanent water rate assistance program be to help small towns and the utilities that serve them to ensure they have stable funding for operations and maintenance and help them provide safe and reliable water to the community, regardless of income?

Ms. MORALES-PATE. That kind of a system would be very beneficial for communities, and important to have some sort of supplemental funding to help them out. We haven't had anything like that, but it would be good to have an opportunity to supplement some of those expense, especially for the very small.

Senator PADILLA. Mr. Byrum?

Mr. BYRUM. That would help with the license to operate. That is one of the big issues we have in Texas now, is finding licensed operators. So I think something like you are talking about, great assistance, but also some type of educational, technical educational program assistance, where the local technical college can train more operators to become utility operators would certainly be helpful, too.

Senator PADILLA. This is a continuation in many ways of a conversation we have had at the subcommittee level, exploring both a permanent basis program, similar to what we have on the natural gas side, because we don't want people to freeze in the winter time. So we are building bipartisan support for something on the water side.

I appreciate your point about the work force piece as well, especially for smaller utilities and smaller jurisdictions. People need trained, whether it is folks who work on the line or even at the management level. A lot of times in smaller communities, it is the same individual in charge of the water system that is in charge of the broadband deployment, that is in charge of other things. So supporting that capacity would be helpful.

Senator Capito is ready to go. We will turn to Senator Mullin. Welcome back.

Senator MULLIN. Thank you. Adding to this line of question, adding to what was said on the operator side of it, fortunately, math was always a real strong point of mine. But I was shocked when I went to go take the test of how much math was included. I was shocked at the amount of math that was required for the operating test. When you start looking at rural towns, a lot of the people that are in the water department, they are laborers, they are workers. Most of them do not have what I would consider a degree in it.

So for them to take the test is very difficult. And there has to be some type of development. At the time when I took mine, there was one class that you could take. There was one company that operated it, one in Tulsa, one in Oklahoma City. In my class, when I took it, I was the only person that passed. There wasn't even anybody else that passed it. And these were all individuals that needed to take it.

So we need to be thinking about this in real development, so John, you are absolutely correct.

Shellie, I will turn to you, because that is where my questions are going to be, not that we don't like Texas, we really enjoy beating them at football. But our kids are born doing this.

[Laughter.]

Senator MULLIN. Ms. Chard, in your experience as Director of Water Quality, how does water infrastructure investment contribute to economic development for local communities in Oklahoma?

Ms. CHARD. It is much needed, and it can have significant impact. A great example is the small city of Inola, Oklahoma, just under 1,800 population. They were able to work with the State Department of Commerce, our SRF funding programs, our State financial assistance programs, and were able to obtain about $60 million in funding in order to do some engineering planning to construct and improve water and wastewater infrastructure. They were able to attract an international paper company to come and build on a site there.

Senator MULLIN. One of the largest in the Country, I believe.

Ms. CHARD. It is one of the largest in the Country. They now have a new neighbor, a solar panel company has built the first facility in the U.S. in Inola, Oklahoma. The port area, Port of Catoosa, has now expanded. There is the Port of Inola, so that we can ship goods in and out.

Senator MULLIN. For everybody to understand, it is a water port in Oklahoma. I know it is not thought about, but we actually have a port.

Ms. CHARD. It is the most inland port in the United States. There was an American Cup yacht that was registered out of there a few years ago.

They have brought in about 1,400 jobs, and a total of about $1 billion investment in a community of 1,800. They couldn't do that without water and wastewater infrastructure money. The questions these companies asked us were, is there enough land, and then immediately, do we have enough potable water, do we have adequate wastewater treatment services. That is what is allowing this incredible growth.

Senator MULLIN. I think a lot of people take that for granted, too. The small town that I live in, Westville, we have a factory. It is a small town of less than 1,200 people. We have one factory called Baldor Electric, where 600 of the 1,200 are employed. So you get another factory coming in, it means a lot. We had a candle factory coming in, and a lot of people, we take the water for granted. You just assume it is going to be there inside the United States. It is something that we really don't even think about.

They built the factory, and we couldn't get the water suppression for the sprinkler system approved, because we didn't have enough water pressure. The building sat vacant forever. Now there is a box company there, and instead of employing a few hundred people, it employs about 25 people.

This is just one of the examples, if we would have had the resources, this could have had a huge economic impact. But because the Federal funding has so many strings attached, and there are so many hoops that you have to jump through, a lot of these small towns, they just don't have the ability to do it. They just can't get there.

I think that is what we are hearing from John, that is what we are hearing from all of our witnesses. We need flexibility if we are really going to go after the rural areas. It is an economic engine. It drives the economy. We are here to try and help. But sometimes we are also the ones that create the barriers.

Thank you all for being here and your testimony. This is one of those areas that is odd, but we are all on the same page on. I yield back.

Senator CAPITO.

[Presiding.] Thank you. Thank you, Senator.

I am going to begin my questioning kind of where Senator Mullin left off, and that is on the flexibility issue. This is for you, Ms. Chard. I will call you Shellie.

[Laughter.]

Senator CAPITO. I talked in my opening statement about EPA's role to ensure State implementation complies with law and regulatory requirements. We realize that you all know your communities better, and individualized communities, especially in the very rural systems, better than anybody else.

Can you discuss how the EPA is utilizing a one-size-fits-all approach to environmental justice to prioritize certain projects over another, even if they may not quite align with the specific needs and priorities that you see in your State?

Ms. CHARD. Thank you, Senator. This is an area where we see a squeaky wheel kind of approach. We hear a lot about a particular contaminant, and then suddenly across the Country everyone must treat for this contaminant or must take action. Some areas in Oklahoma where we have seen, we hear a lot about PFAS and those kinds of contaminants. While those are critically important to address, we see a lot of iron and manganese that we would like to address. That is the pressing need for some of our communities. But that is not the same priority.

Senator CAPITO. What happens to those? Do those fall further down the list, or do they qualify for the Federal funding? How does that impact those systems?

Ms. CHARD. It could be either of those two options. In many cases, it may be something that is simply, well, that is not high enough priority, so you have to spend a set amount of money addressing something else. In some cases, we have to move to some of our State funding options, which do not have the Federal backing. But we are able to utilize our flexibility where we would like to be able to partner with our Federal funds in order to assist these communities in addressing those areas that are most important.

Even in a State like Oklahoma, where we have, the eastern side of the State has very different water quality than the western side of the State, groundwater versus surface water, different aquifers, hydrogeology is very different, we feel like we can better identify what will help our communities most as opposed to just one size fits all.

Senator CAPITO. Thank you for that very comprehensive answer.

I don't have tribal communities in my State, but does this have an outsized effect on the tribal communities in terms of being able to meet their particular needs if it doesn't fit into the particular niche of the EPA?

Ms. CHARD. All small, rural, underserved, disadvantaged communities face these same issues. It is very important that no matter whether they are a tribe or a rural water district or a municipality, they struggle with the one-size-fits-all approach. We try very hard to work with them to help identify processes that can assist them in meeting their specific infrastructure needs.

Senator CAPITO. Ms. Morales-Pate, in terms of the capacity issue, this is a, I have been on a bill for many, many years with Senator Booker to try to get more professional, more young people interested in professional water management. I guess it either sounds boring or it wouldn't be enough to raise a family on, when as Senator Mullin was talking about, the test is not a layup. It is a lifetime of employment and a very good career pattern.

How are you through your organization trying to help with that issue?

Ms. MORALES-PATE. We provide technical assistance and training. Training is a big component of the work we do out in the field.

To your point about keeping that capacity in the communities, one of the challenges that we have, in my opinion, there are two pieces to this situation. One is the training piece. But the other part is the retention. We can train all day long. But if the communities do not have the ability to offer competitive salaries and competitive benefits, the retention part becomes a problem.

So what happens with our communities is they end up becoming the training ground for larger utilities.

Senator CAPITO. Right.

Ms. MORALES-PATE. It is a real challenge.

Senator CAPITO. Law enforcement has the same issue.

Ms. MORALES-PATE. Yes.

Senator CAPITO. Mr. Byrum, I loved this quote you gave us: access denial by process, meaning the gobbledy-gook of getting all this put together, applications, Ms. Chard talked about it a little bit, what is the solution there? Is it a simplification? Is it to quit loading up guidance, they give you guidance all the time, it is not really a regulation, it is a guidance from the Federal? Is it, give the State all of the authorities?

Where is the solution here to simplify this process to get the money where it really needs to go?

Mr. BYRUM. We were talking about flexibility. It is kind of one of those things where if you give States all the authority, well, then they still need some flexibility in there somewhere, I think. One State might be harder than the other, or whatever.

I really believe in the case of Rialitos-Concepcion, the Duval County people I was talking about earlier, they got up this morning and drank water that was in excess of arsenic. That would be different than someone maybe in the eastern part of Texas where they have a city of 3,000 and they may not have the same issues. It may be a different issue there.

So I think that there is room for some latitude there with the States, giving the minimum requirements of the Federal. So I think that what we need to do is go back and find out just what the States are requiring over and above those Federal guidelines.

Senator CAPITO. Right.

Mr. BYRUM. I believe there are some differences there that, if we were to relax those back down to the Federal guidelines, I think in a lot of these cases, we might be OK.

Senator CAPITO. That is interesting. Do you or any of your systems test for PFAS right now?

Mr. BYRUM. We just entered a contract with someone to test for PFAS down around the Gulf Coast. So yes, we are just starting that.

Senator CAPITO. Do you have any experience with that, Ms. Chard?

Ms. CHARD. Yes, we do have some of our systems, our drinking water systems are of course participating in the Unregulated Contaminant Monitoring Rule 5, where they are monitoring for a variety of PFAS. And then we have some of our larger systems that are monitoring not only drinking water but wastewater, at their wastewater treatment facility, their biosolids. They are monitoring inside their collection systems to detect where they may be receiving PFAS.

Senator CAPITO. What about you?

Ms. MORALES-PATE. Yes. We do a lot of training across the Country, so part of the training we do is to train operators to test, to do their own sampling. So we have been doing that. Some of the regions have State-specific.

One of the challenges, I guess, is that every State is handling it differently. So some of the States are doing the sampling in all their inventories. So there are different levels. We are in all 50 States and the territories, and everybody is like on different levels, but we are definitely involved in that, and educating the communities, the operators, the decisionmakers and all about the implications and potential solutions.

Senator CAPITO. OK, thank you.

Senator Fetterman.

Senator FETTERMAN. Thank you. Thank you very much.

Gosh, I love clean water. I find it useful all the time. Maybe you can relate. I believe in it. I think it is great.

But Ms. Morales-Pate, I just want to ask about corporate—private water. Just me, and I don't speak for anybody else, but I don't think that something like water should be for profit, profit for basic kinds of water service. And I am not talking about bottled water that you get from a Sheetz or a WaWa, usually Sheetz in Pennsylvania, over a WaWa. It is a scandal, but we won't get into that.

[Laughter.]

Senator FETTERMAN. But at any rate, I do think for utilities and things like that, I believe it should belong in the public. Because it belongs to the public and it should remain there as well.

In Pennsylvania now, two companies control water for 3.8 million residents here in Pennsylvania. I don't think that is what it should be. In Pittsburgh a couple of years ago, there was an attempt to consider selling the public water. Of course, people rightfully pushed back. It was stopped.

I think it can be often too easy to allow private companies, cheap EPO, it is a buy-up, those kind of wastewater ones as well, too. So, really, my question is, can opening the door for private wastewater cause the same problem we have seen with drinking water?

Ms. MORALES-PATE. Senator Fetterman, members of the committee, thank you for your question. I appreciate the question. One of the comments that I made earlier was about regionalization and regional solutions. One of the problems and one of the challenges that we have seen over 50 years of the RCAP is that it is increasingly complicated for small communities to be able to be sustainable. We have been at RCAP looking at regional solutions. By that I mean working with communities to make informed decisions on what are the best options for them.

So when I ask about flexibility in the spending, I am talking about, specifically talking about funding planning studies that evaluate all the options, privatization should be one of those options to be evaluated, but it should not be the only option that communities are presented with.

Too often in our communities where that has been the solution, we find communities without voice, without the opportunity to weigh in on the rates, without the opportunity to weigh in on their future. So is there room for it? Yes. The process in my mind is what hasn't been done correctly, and it is not necessarily being enforced at any level.

So opening it up, I am not sure that we can close it. What we can do is put a system in place that evaluates all the alternatives, so that decisionmakers, as I said before, are able to make informed decisions and can weigh out the pros and cons on every option, from governance to operations to management, to financial implications at 5 years, 10 years and down the road. That would be my recommendation.

Senator FETTERMAN. What I think about in this kind of question is Flint. How did that go really well? And that is shocking, that in our Nation something like that where you are poisoning residents as well. Flint is a larger version of the community that I was mayor and where I currently live, it is like fundamentally communities that are kind of left behind or devalued in a way. I just think that is why I am really concerned about the privatizing, or where can we get the water from the cheapest source. It is like, ship it on through as well.

It is about other issues, too, in fact, infrastructure as well, lead and everything.

But at any rate, communities, it sounds like privatizing water isn't the answer. I think I have been clear about that. What other kinds of solutions might work instead?

Ms. MORALES-PATE. I have been working on regionalization efforts and bringing communities together to create economies of scale while protecting their community identity. Every community wants to be protected, just like any of us here, we want to be able to keep that identity. But the flexibility and the support from States on legislation aimed at, and even from the Federal Government, on how that happens, I think it is very important.

If we are not able to make a difference on the small system challenges, we should probably consider what else are we not doing that maybe we should start looking at, and let the local decisionmakers make those decisions, but make that an option. Right now it is not in a lot of our States across the Country.

Senator FETTERMAN. Madam Chairwoman, perhaps 30 more seconds?

Senator CAPITO. Sure.

Senator FETTERMAN. Thank you. Also, and perhaps for my colleague in Oklahoma, fracking in my State can often contaminate waters. That is another water safety issue, too. Then when you have privatizing or things, sometimes there have been issues about some of the private companies being held accountable to the contamination. I want to make that point too, it is not just an urban issue, it can actually be a rural one, too.

I thank you for the indulgence.

Senator CAPITO. Thank you. Senator Mullin, did you have another question?

Senator MULLIN. Yes, I can go on that, I have to unpack that fracking comment. John, first of all, honestly, I get to know your sense of humor all the time, and I find it interesting to me. Seriously, I think we would have a lot of fun sitting down and having conversations.

Fracking, when you start talking about fracking, though, I mean, when you start talking about where the aquifer is and the fracking that takes place, we are so far below that that I don't know if there is actually a case that can be found——

Senator FETTERMAN. That was not a shot at you or anyone. You are a State that fracks.

Senator MULLIN. John, I know that. I was actually giving you a comment about your sense of humor. I enjoyed the water part. I am dead serious. But I was just trying to say about the fracking, fracking isn't causing water contamination. This is being debated, we have talked about this multiple times, and we understand this. We have been bragging for a long time in Oklahoma.

But when you start talking about Flint, Michigan, Flint wasn't a private company. That was actually public works. And there is a huge difference between that. And I think John and I and maybe Shelley and all of us could actually discuss what happened and some of the chemical reactions that caused some of the discoloration that took place because of the electrolysis it caused because of some of the chemicals that eroded, some of the coating that was on some of the distribution pipes. You could go through this process and actually discuss what happened there.

But it was poor management. That was what ended up coming out. Public-private partnership is something that might be able to work. I mean, everybody is paying a water bill. Sometimes govern-

ment may not move, not sometimes, government just doesn't move as fast as private industries. Private industries can bring a solution and can do it in a very effective way. It is not that income isn't coming in; there is a tremendous amount of income that comes in in these places.

It is just, because of the barrier that is there that is keeping public and private partners from actually being able to come together, are we actually losing technology that could help us be more efficient. I mean, there isn't any of us that would just allow a water leak to continue on our place of business. We wouldn't just let it pour through the concrete. We wouldn't let it just continue to flow in our front yard or flow underneath our house. We would fix it.

Yet rural water, that is their biggest challenge. There are rural water departments in Oklahoma that are losing 50 percent of their water because of the distribution system. And there are solutions to that. But it may take private industry to go in and invest in those industries. Think of what quality that would help in the amount of water that we would be saving.

So we have to think outside the box when we are talking about delivering these systems and what is working and what is not. No one can say that we can't improve. And sometimes we try to improve in Congress by regulating, by demanding that these small, rural water permits can't have more than a 20 percent loss or we are going to fine you X amount of dollars.

If they could fix is with the money, they would already have it fixed. I mean, what good is that going to do? That is just going to penalize them, and then they are not going to be able to deliver the water. Who is going to come in and take it over?

I mean, it is insane, some of the regulations that are coming out of these systems. It is just that, this is why I was talking to Shelley earlier about, it is better to be regulated at a local level because they bring the human side to it. It is not just black and white. Not ever system is the same. Every system is different, every water that you are treating is going to be different. Every time you get water from a different place, it brings in its own challenges of how to treat it, even if it is being treated at the same plant, is that not right, John?

Senator FETTERMAN. Right.

Senator MULLIN. So one size does not fit all, and it will not fit all. And we need to give these States and these local municipalities and these rural waters flexibility to be able to do their job. We all want to drink water, because guess what, if you live there, there's a good chance you are drinking the water you are treating. There is a pretty good incentive by itself. I don't think you need any more incentive than that, right?

Real quick, one question I have, ma'am, in your view, what are the biggest challenges small and rural communities are facing right now? I just ranted on that, but I am going to ask you the question?

Ms. CHARD. Of course. There are so many challenges that they are facing. What we see right now is trying to help them get the infrastructure funding that they need so that they can comply with the regulations they are required to comply with. We need to be able to help them, technical assistance angle, they have rate issues because they don't have the expertise to set appropriate rates. They

may not have the technical expertise to run the facilities that have been designed and built for them.

They are paying very low wages, not because they want to, but because that is the money that they have. And that is a huge challenge for them, is to be able to pay a rate that those operators, when they get them certified, can stick around and work in their home communities.

We also see challenges in trying to go through some of the basics in order to apply for funding related to the emerging contaminants. PFAS has come up here, other contaminants. Some of the infrastructure funding, they have to have already sampled and identified that those contaminants are present before they can get funding to do anything to further study, to further identify the extent of that contamination.

So that is something that is definitely a challenge for them, is how do they get the money to find out if they have a problem so they can get the Federal money then to address a problem. So there are several things like that, training, you mentioned the math aspect of operator licenses and work force development. That is absolutely a huge issue, and we have seen where for one of the community colleges in Oklahoma, Rose State College, was designated an environmental training center. So they have funding, and they do a lot of training with our operators on those basic skills, getting their skills up to date.

We also have a program where we are working with some of the Oklahoma correctional facilities to train low-risk offenders who are likely to be released soon. They work at the treatment facilities at the correctional facilities, so that they then may be staying in those communities working for the municipality. We kind of solve a couple of different problems at the same time.

Senator MULLIN. I appreciate that. I have sat through many hours at Rose State continuing education classes. So I have been on that campus a lot.

I yield back. Thank you.

Senator CAPITO. Thank you. Senator Markey.

Senator MARKEY. Thank you, Madam Chair.

About 30 percent of Massachusetts families rely on decentralized septic systems to deal with their wastewater. Unfortunately, climate change-induced sea level rise, combined with more frequent and intense storms, causes flooding that drives up maintenance and operation costs.

Without access to resource to repair these septic systems, sewage starts leaking into the environment. In fact, on Cape Cod, failing septic systems are a leading cause of water pollution.

Now, apart from funding to address combined sewer overflows, we also need to help homeowners on decentralized wastewater systems to cope with these costly climate fueled stressors in order to fully protect public health and the health of the environment.

So Ms. Morales-Pate, what would you change about the current way the Federal Government funds these infrastructure projects to make assistance more accessible to these communities?

Ms. MORALES-PATE. Senator Markey, thank you for your question, members of the committee.

Flexibility I think is the one thing we keep saying over and over again this morning. Clmiate change is really pushing us in the direction that it is causing us to think outside of the box. A centralized system is really not the only solution for communities. We work in all 50 States and the territories, and we have plenty of communities that are on septic tanks.

To your point, climate change is creating challenges that are really not funded by anybody. So the responsibility falls back on homeowners. I come from the Colonias area down in New Mexico. I can tell you that a septic tank costs more than some of the mobile homes that people live in. That is a problem.

Senator MARKEY. And you are saying it is climate related?

Ms. MORALES-PATE. It is climate related.

Senator MARKEY. Yes. So these people living with a problem they didn't create, they never assumed when they were buying, and now they are left with the responsibility of dealing with something and they need help.

Ms. MORALES-PATE. That is correct. Current funding that we have doesn't really allow the homeowner at the individual level to apply for and to receive——

Senator MARKEY. You want flexibility in the program so it can be used for projects like this?

Ms. MORALES-PATE. Flexibility to be able to address—I think the responsibility that we have to protect the groundwater sources applies across the board, applies to all of us.

Senator MARKEY. OK, so do you think the Federal Government should create a program, a grant program for small and rural and disadvantaged communities, even low-interest loans? Should there be something intentional, specific, for rural communities?

Ms. MORALES-PATE. I believe yes, Senator Markey, I believe that is necessary. It is definitely a gap that we are missing right now. Some of the States have it; not every State does.

Senator MARKEY. OK, so let me move on. Small, rural, and disadvantaged communities who rely on centralized and decentralized wastewater systems often lack the resources to do the assessments, the planning and the grant writing necessary to access Federal support for wastewater infrastructure. That is why I fought hard to ensure that the Drinking Water and Wastewater Infrastructure Act of 2021 had a new provision to support technical assistance for these communities.

Ms. Morales-Pate, can you speak more to the wastewater technical assistance needs of these communities, and the role that nonprofit organizations like the Rural Community Assistance Partnership can play in helping to fill this expertise gap?

Ms. MORALES-PATE. Thank you for your question. Certainly, as technical assistance providers, we work with communities at a comprehensive level. So we work with communities on the water side and on the wastewater side. It is very important to take a comprehensive approach to the solutions that these communities need to have.

Sustainability is very important. If we are not intentional on the work with this community sometimes, what ends up happening is that you have the water side subsidizing the wastewater side. So the average community member that we work with has not worked

and doesn't understand how these projects operate, how they get funded. So it is a function of a technical assistance provider to guide them through this process.

On average, we stay with these communities anywhere from seven to 10 years, especially for wastewater project development. It is a long-term relationship; it is a relationship of trust where we are probably the only constant piece throughout the development of these projects, so that they, to make sure that they——

Senator MARKEY. So the Federal technical assistance grants have helped you——

Ms. MORALES-PATE. Yes, sir.

Senator MARKEY [continuing]. to provide expertise to communities, otherwise who would have no expertise at all?

Ms. MORALES-PATE. Correct.

Senator MARKEY. So that is absolutely critical.

Finally, with your indulgence, Mr. Chairman, I appreciate it. I am proud to work on this committee with you, Mr. Chairman, on much-needed clean and safe drinking water funding in the Infrastructure Investment and Jobs Act, which has started to make its way to disadvantaged communities in Massachusetts and beyond. In Massachusetts, communities are using this funding to replace dangerous lead pipes that contaminate our drinking water and threaten our children's health.

So first, I am concerned that the formula for lead service pipe replacement is disadvantaging Massachusetts, which has a dire need for funding. Second, I know we still have a lot of work to do.

Ms. Morales-Pate, what can the Federal Government do to help ensure that all communities have lead-free pipes?

Ms. MORALES-PATE. Again, I think it is, part of the work that we do is working with communities on the inventories, what is actually on the ground and how do we get them funded and how do we get that replaced, and how do we get that health hazard out of the communities. The flexibility of the funding, both in the dollars and the timing, is critical, especially for small communities that lack the capacity to do all this work.

Senator MARKEY. Thank you.

Mr. Chairman, I was elected in a special election, because my predecessor passed away in 1976. And I found the first letter that I wrote in 1976, and it was to the EPA on lead in housing in the poorest communities of Massachusetts and how it was exposing children to lead.

Here we still are in 2023, we are having a hearing on lead pipes and the need to ensure that States and non-profit partners get the help they need on a universal basis to deal with this legacy of lead having been used as a way in which paint is put on walls or water is transmitted throughout our society, and maybe they were well-intentioned at the time, but science has caught up to it and we need that additional funding.

I thank you again for all of your leadership on this over all these years, Mr. Chairman. And I thank our great panelists for your instruction to the committee on these issues. Thank you.

Senator CARPER.

[Presiding.] Thank you. Senator Markey and I have been privileged to work together for a long time. In 1976, when he was first

elected, I was first elected States Treasurer of Delaware. Nobody wanted to run. We had the worst credit rating in the County. And I said, I will run. I was about 3 years out of the Navy, and I got to run.

Senator MARKEY. I will say this. That was not true for my first race. Twelve people were running.

[Laughter.]

Senator MARKEY. I was raising $30,000 to win the race, and on my first poll, in the 12-way race, I was at 3 percent with a 5 percent margin of error in my own poll, meaning I could have been minus 2 in that first poll. So I wish I was in your position to say, we want you, Tom, there is one guy to fill this seat.

Senator CARPER. Two months after I was elected, Pete du Pont was elected. Remember Pete du Pont? He was a former Congressman, then Governor, and turned out to be a great Governor, a great mentor for me.

Senator MARKEY. Yes, the du Ponts and the Carpers, you guys were growing up together.

Senator CARPER. We wish we could have half, even a quarter of their money. But anyway, Pete du Pont, 2 months after the election, was giving his first State of the State address. I am sitting in the back of Legislative Hall, next to crusty old Democratic Senator Thurman Adams. Pete du Pont announced in the State of the State address that year that we were bankrupt. And the State Senator Adams turned to me and said, Treasurer Carper, now you know why nobody wanted to run for Treasurer.

[Laughter.]

Senator CARPER. But it has turned out OK.

Senator MARKEY. It turned out OK for us, but not for people who have lead in their pipes.

Senator CARPER. There you go. Get the lead out.

Senator MARKEY. We still haven't solved it. Thank you, Mr. Chairman.

Senator CARPER. Thanks so much.

Next, Senator Ricketts, you are on. Thanks so much. Thanks for joining us. Thanks for all your work.

Senator RICKETTS. Thank you, Chairman Carper, for holding this important hearing about drinking water and wastewater systems and how it impacts rural communities and the implications. So thank you very much.

I believe I went over my time yesterday quite significantly, so you were very indulgent and kind yesterday, Senator Markey. Thank you.

Next month, the EPA is expected to release proposed rulemaking regarding meat and poultry producers effluent guidelines and standards. I joined my senior Senator Fisher from Nebraska in sending a letter to the EPA encouraging them to work with small meat and poultry processing plants to ensure that regulations are practical, science-based, and without imposing undue burdens on many of these facilities that are oftentimes small businesses.

The EPA itself estimated the initial cost of compliance is $800,000 for facilities processing one million pounds of meat a year, which is probably not very much. I was actually talking to a meat processing facility on Saturday night, a gentleman who runs it. He

has about 260 people, and he is estimating it is going to cost millions of dollars to be able to apply. He said, we can probably make that work, but smaller facilities are going to be much more challenged.

So Ms. Chard, I assume that Oklahomans share our concerns with regard to the EPA missing the mark on this rulemaking. Could you elaborate on the need for practical, science-based regulations, especially as it applies to effluent guidelines and meat processing facilities?

Ms. CHARD. Yes, thank you, Senator. Effluent limitation guidelines serve a purpose, setting that national standard. This does speak a little bit to a topic from earlier about one size does not necessarily fit all. We do in Oklahoma have large meat processors, but we have significantly more that are one or two or three or ten people tops that work there that are processing a very small number of animals a year.

Where I see one of the potential issues with these effluent limitation guidelines on those smaller processors is where maybe they are located in a rural community, they don't have their own wastewater treatment. They may be looking at trying to discharge to the municipal system. The way that the regulations are set up, that does still put those same discharge limits on those processing plants, regardless if they are going to a water body or to a treatment plant.

That can be very challenging. It can be very challenging in how do you fund the necessary pre-treatment that goes into those systems. As it is now, the municipality can obtain that funding, not the actual industry who is required to construct it, build it, operate it, maintain it. So that is particularly challenging.

If we don't take into account the difference in size, that is a very different volume of water. It may be different makeup depending on the type of animals, the type of pretreatment, the type of processing process that they utilize. All of those processes factor in to what makes sense and what doesn't make sense as opposed to here is the limit, everybody, good luck.

Senator RICKETTS. Right. Thank you very much, Ms. Chard, for that excellent answer about all the implications of that. I really appreciate it.

It really highlights that many water systems, especially those in small, rural communities are concerned about the one-size-fits-all, and also the costs that go along with it and how they are going to be able to manage that, especially when they have a limited ratepayer base and so forth. One of the ways is obviously through the EPA and some of the dollars they have available.

Ms. Chard, through the award decision process, is it your opinion that EPA has taken an unbiased approach to delivering these dollars or have projects been prioritized which tie water infrastructure to climate goals?

Ms. CHARD. I am not sure that I can accurately speak completely to that. What I can say with confidence is EPA does establish what eligibility criteria and types of projects that are available to receive funding. That is a requirement, then, that the States, if they want to receive that money to do loans or grants, anything that the Ad-

ministration puts in those requirements and the State is obligated to enforce that is well.

Senator RICKETTS. Have you seen, though, that they have put climate goals as part of that, versus we are just talking about some of these effluent standards, which are more directly related to the business of processing the meat, have they tied some of these dollars to climate goals? Have you seen that as part of the requirements they have put out?

Ms. CHARD. I suppose that when you look at some of the stormwater funding that is available, that is definitely related to climate change and rainfall events. That absolutely is part of the conversation.

The effluent limitation guidelines are technical limits that are established through the Office of Science and Technology, which is very different from the funding arm of EPA. But all of those topics are very much part of the conversation, part of the guidance.

Senator RICKETTS. All right, thank you.

Can I have just one more question, Mr. Chairman.

Senator CARPER. You may.

Senator RICKETTS. Thanks. So as these dollars have gone out to communities, what issues have arisen in both the application and implementation process? I am talking about broader, not just on the effluent guidelines, but anything at all. What are some of the things that you have seen with regard to especially impacting small and rural communities with regard to the application process or the implementation process of getting these dollars to help them?

Ms. CHARD. Great, Senator, thank you very much. Something that we definitely see, of course, we have talked about the challenges sometimes of making application and of being able to afford the planning and the study documents that have to come before those applications happen.

But something that we see that doesn't get talked about very often that definitely we see in Oklahoma and across the Country impacting these small, rural, and disadvantaged communities, we have permits that are 5 year duration. So we have limits that take effect, they will borrow millions of dollars, construct treatment equipment in order to meet the new limits. The permit has now expired, it has been 5 years, they are getting a new permit. And now they may have new limits that take effect and they still have maybe 5, 10, 15 years left to repay a loan and now they are looking at how they can obtain funding to meet that next challenge.

So certainly, long-range planning becomes very important, and the rate at which new requirements go onto wastewater treatment facilities.

Senator RICKETTS. So again, if I can understand what you are saying, I got a 5-year permit, I took out a bunch of money to be able to meet the requirements of that 5-year permit. Now that 5-year permit expires. I still haven't paid off the loans for the equipment I bought already, and now there is more stringent requirements, the requirement to go out and borrow even more money to be able to meet those requirements. Is that fair?

Ms. CHARD. Absolutely.

Senator RICKETTS. And so what would be a solution? Would it be to extend the life of the permits to be longer? How will we address that?

Ms. CHARD. I think reevaluating permit timelines definitely makes sense. Five years is what was established in the Clean Water Act in 1972. It may be time to take a look at, does 10 years make more sense, or maybe you have to put additional guardrails on it, so that we are looking at site—specific characteristics of the receiving water.

But that would definitely be something that would be beneficial for all of the compliance dates that come in. It would also be beneficial if there is funding, that can be additional grant funding or a criteria to move to a higher grant percentage versus loan percentage. Are those compliance issues, the indebtedness factor, those are some things we could think about.

Senator RICKETTS. Great. Thank you very much, Ms. Chard.

Ms. CHARD. Thank you.

Senator CARPER. Senator Sullivan, your timing is impeccable. Are you ready to take the handoff from Senator Ricketts?

Senator SULLIVAN. Yes.

Senator CARPER. You are recognized. Go ahead.

Senator SULLIVAN.

[Remarks off microphone.] I appreciate your holding this hearing. I think it is a topic that is all too often overlooked. It is a huge issue in Alaska, in my State.

There is usually debate about aging infrastructure here, that big issue with the town in Michigan, Flint. But that was a big problem, no doubt about it. But my constituents were like, well, I get aging infrastructure, what about communities with no infrastructure? What about communities with no water and sewer, none? No flush toilets, American citizens.

By the way, in my State, some of the most patriotic Americans, Alaska Natives, serve at higher rates in the military than any other ethnic group. Then they go home from wars they serve in, they go to communities with what we call in Alaska honey buckets, which are not very sweet smelling, despite the name.

So can I ask the witnesses first, the first question is, don't you think that when we have these kind of programs, it is kind of like the same argument we have with broadband connectivity, that the Federal funding and programs should be focused on the communities that don't have anything?

I have over 30 communities in my State that don't have any flush toilets or running water. During the pandemic, the CDC was like, wash your hands five times a day, and they were like, we don't have running water. America. It is really horrendous, a topic I care deeply about.

Could I just get from each of you a view on that? Maybe we will start with you, Ms. Chard.

Ms. CHARD. Thank you, Senator. Absolutely, we have to do better at funding infrastructure.

Senator SULLIVAN. But the priorities should be——

Ms. CHARD. I would say, rather than focusing on compliance with regulatory standards, maybe it is compliance with construction in

addition to the replacement. But you have to have it first. You can't protect public health without water and sanitation.

Senator SULLIVAN. Yes. How about you, Mr. Byrum?

Mr. BYRUM. Absolutely. Those services, we are seeing that in the southern part of our base, in our 18,000 square mile base, and we are seeing a lot of heavy nutrients added to the Gulf Coast area because of lack of services like wastewater service, maybe lack of septic services that we are taking care of, septic tanks and those that are taken care of.

A few of those programs we have had we did get some money. We live in a State where they will put some money together to fund wastewater onsite septic facilities replacements. In those few programs that we have administered, we have had enough to replace like 50 septic tanks, 50 septic services. But we have had applications for well over 150 of those.

So it is a big problem not only in, and I am certainly sure it is a problem in Alaska, but it is a problem in other areas too. So yes, that needs to be a priority.

Senator SULLIVAN. OK. Ms. Morales-Pate.

Ms. MORALES-PATE. Thank you, Senator Sullivan. I happen to work with the Rural Community Assistance Corporation, which is the western RCAP. Alaska was one of my territories.

Senator SULLIVAN. I know you have a lot of experience.

Ms. MORALES-PATE. I do have a lot of experience.

Senator SULLIVAN. What is your view? Don't we need to get the Federal dollars to the places that don't have anything first?

Ms. MORALES-PATE. Yes.

Senator SULLIVAN. It seems pretty obvious.

Ms. MORALES-PATE. It is very obvious. I will say that it has been one of the hardest boulders to push up the hill, because we don't have the infrastructure on the ground then to develop those projects, to manage those projects, to own those projects. So in my mind, yes, we need the physical infrastructure, but we also need to invest in the human element that will make those projects sustainable to address the needs of those communities.

Senator SULLIVAN. Yes. Thank you.

I just want to mention one other thing. I always bring this chart out; I am going to bring it out again. This is a chart that I like to highlight in Alaska. It shows life expectancy changes in the last 25 years in America, and the State and the region of my State that has had the most increase in life expectancy of any State in the Country, from 1980 to 2014 was Alaska. Up to 13 years of increased life expectancy, which to me is like hey, that is the most important indicator of policy success there can be, the people you represent, are they living longer. I think that is pretty obvious.

I bring this up because a lot of this has to do with resource development, job opportunities, but a lot of it has to do with this. Water and sewer are basic services that most Americans think, of course every American has flush toilets and running water. No, that is not the case.

So I always like to remind people, hey, when you are shutting down opportunities, when you are shutting down resource development, yes, oil and gas, we need it, the Native people in my State certainly are really focused on this. Matter of fact, the leaders from

the North Slope Borough are in town right now, the elected leaders, tribal leaders, Alaska Native Corporation leaders. They tried to meet with Secretary Haaland seven times in a row since they have been here. Seven times. She won't meet with them. Crazy. I don't know why that is happening. It is happening again today.

But I want to thank the witnesses. It is a really, really important issue. Again, Mr. Chairman, I think the idea of prioritization of the places that don't have anything to begin with, and then you can upgrade Flint, Michigan, and other things. But I think it is really an issue of fairness and it looks like all the panelists would agree with that approach.

Thank you again, Mr. Chairman, for holding this important hearing. Thank you.

Senator CARPER. Thanks for joining us.

We have votes that have just been announced on the floor. Another committee I serve on, the Finance Committee, is voting on legislation involving PBMs. They are trying to figure out how to provide pharmaceuticals to people, particularly seniors, in a more affordable way. We have the three of you who are going to help us wrap up this hearing, so there is a lot going on. You have come on an interesting day.

I get to travel around the Country a fair amount, around the world, actually. You probably do too. One of the questions I ask people wherever I go is, what brings you joy in your life. I ask that a lot, what brings you joy in your life. Believe it or not, the answers are pretty similar. For the most part, people say, I like helping people. I like helping, I hear it all over the time, from all over the Country, Alaska, Delaware, you name it.

One of the ways we can help people is to make sure we are meeting the drinking water needs, and also their wastewater sanitation needs. The comments of Senator Sullivan are really very much on point.

I have a couple questions I am going to ask you, and then I am going to head off, join my colleagues on the Finance Committee vote, and then go vote on the floor. So again, thank you so much for joining us today.

The first question I am going to ask is, Ms. Morales-Pate, do you pronounce your name Morales-Pate?

Ms. MORALES-PATE. Yes.

Senator CARPER. I want to call it Pate, but that would probably get me into trouble with your family.

Ms. MORALES-PATE. My husband might have an issue with that.

[Laughter.]

Senator CARPER. I am sure. Well, I will try to stay out of trouble with him, and you.

A question, if I could, for you and Mr. Byrum. It is an honor for me to serve on this committee with Senator Capito and our colleagues, Democrat and Republican, where the Bipartisan Infrastructure Bill actually began, right here in this room. Major pieces of the Inflation Reduction Act began in this room, Water Resources Development Act, right here in this room. If the walls of this room could talk, it would say a lot. A lot of the work we do is actually across the aisle in a bipartisan nature. I am proud to be part of the committee, honored to lead it with Senator Capito.

I am also proud of the committee's work to improve wastewater infrastructure for communities large and small, especially underserved communities that Senator Sullivan and others have talked about. The Bipartisan Infrastructure Bill that I mentioned, which was signed into law by the President almost exactly 2 years ago provides over $55 billion for drinking water and wastewater infrastructure, including almost $12 billion in supplemental funding for the Clean Water State Revolving Funds.

That said, much of the funding was meant to help small and underserved communities, as you know. Yet we have continued to hear that these communities, too many of these communities are having trouble accessing the funds because they do not compete well or that the community is only being offered a loan, not a grant.

My question for the two of you, if I could, and then I will ask other questions of you, Ms. Chard. First, Ms. Morales-Pate, Mr. Byrum, here is my question for the two of you. Will you please share with us some examples of how underserved communities are struggling to access these funds?

I will say that again. Will you please share with us some examples today of how underserved communities are struggling to access these funds? The second question is, why is it important? Why it is important for the Federal Government to offer grant programs in addition to loan programs?

Ms. Morales-Pate, would you go first?

Ms. MORALES-PATE. Thank you for your question, Senator Carper.

One of the struggles that we seek, and it was mentioned before by the fellow panel members, has to do with the requirements for a PER, a preliminary engineering report. In the communities that we work with, the kind of funding needed to complete a PER sometimes is just not there. A lot of our State are not offering planning dollars.

So that is the very first step. If we cannot get them to that step, then we really don't even have a chance.

Other challenges that are also part of it is financing. We need to provide financials for the last 3 years. In some cases, we are talking about finances that have been put together in a shoebox with just receipts. Sometimes they don't even have a budget put together that has been approved that supports the operations of the utility. So it is working on this finances and going back.

Sometimes it is leadership that has changed, the members or the decisionmakers have changed over time, and we don't have all the paperwork necessary to begin to put a solid application together. There is more to be said, but I will turn the rest of my time.

Senator CARPER. I am going to ask you to hold it right there. I have just been contacted by the Senate Finance Committee. They are now voting on important prescription-related issues. They need me to be there to vote. I am going to recess this hearing for probably less than 10 minutes, and come right back. When I come back, Mr. Byrum, you are up. Don't go anywhere.

We are standing in recess. Thank you.

[Whereupon, the committee was in recess from 11:39 a.m. to 11:45 a.m.]

Senator CARPER. The committee will come to order.

I think we passed the baton to Mr. Byrum. Mr. Byrum, same question. If you want me to repeat the question, I will. OK, sure.

This is a two-part question. I asked both of you if you would share with us some examples of how underserved communities, how underserved communities are struggling to access some of the funds that we are talking about, State Revolving Funds and the moneys for wastewater infrastructure. But some examples of how underserved communities are struggling to access these funds. The followup question is, why is it important for the Federal Government to offer grant programs in addition to loan programs? Why is it important to offer both? Go ahead.

Mr. BYRUM. Thank you, Senator Carper. First of all, we had a conversation before about your service in Corpus Christi and learning to fly there in Corpus Christi. Thank you very much for your service, by the way.

Senator CARPER. I loved it.

Mr. BYRUM. We are safe today because of folks like yourself.

Senator CARPER. Thank you so much.

Mr. BYRUM. One of the things that you probably flew over back in the day was a place called Baffin Bay. I don't know if you remember that term or not, but it is a great fishing place, it is hypersaline, very unique situation. The people around Baffin Bay have experienced——

Senator CARPER. I don't know if I remember Baffin Bay. I remember going to bullfights down on the border of Mexico.

[Laughter.]

Senator CARPER. At the end of the night, I think there was about seven or eight bullfights there, but at the end of the night, it was bulls five, matadors two. Not a fair fight. Back to you.

[Laughter.]

Mr. BYRUM. These people living around the Bay have experienced some water quality issues. We went to researching that as a subdivision of the State that is protected resources. We went down and researched that and some other political subdivisions and action committees did that. They found that 58 percent of the nutrients in the bay, the high nutrient load in Baffin Bay was contributed from human sources.

Senator CARPER. What percentage?

Mr. BYRUM. Fifty-eight percent. The other 42 percent was from agricultural and wildlife sources, which are easy enough to treat also. But the problem is, the people need money. These are poor communities. When you trace that back up, Petronella Creek, which feeds into Baffin, one of the tributaries into Baffin Bay, you find that the wastewater treatment plants there were built under Public Law 92–500, a great law back in the late 1970's, that funded 75 percent, EPA funded 75 percent of these wastewater plants, and 25 percent local. They were able to build wastewater plants, and they have served their purpose.

The problem is, they are at the end of their operational life. They have tried to get funding through the State Revolving Loan Fund and grants, and they just haven't been able to get there. Again, they are poor communities. The median income in these commu-

nities is well below the national average. And they just can't access them.

So what we are trying to do is put together a regional plan to address the needs of the 58 percent, the lion's share of that is from these wastewater plants. They had to have the grant the first time to build the plant and build the facilities. They need it again so they can rebuild the facilities some 50 years later.

Senator CARPER. All right, thank you.

My next question, Ms. Chard, we will get you into the action here. I am going to ask this question of all three of you, and ask you to lead us off. Many disadvantaged communities face significant environmental challenges and have extensive infrastructure needs. That is true in Delaware and I think 49 other States as well. Certainly, it is true in Alaska, as we have heard.

These communities have historically struggled to access Federal funding, as we mentioned earlier. In part this is because they have lacked the technical expertise, we heard this again and again, they have lacked the technical expertise to navigate the application process.

Yesterday, EPA announced it was expanding the Lead Service Line Accelerator program. For most people, they would say, what is that? But it was an important announcement. This is a technical assistance program that is helping communities identify lead lines and to make plans for their removal. EPA is also helping these communities with their State Revolving Fund applications.

Question, starting with you, ma'am. Will you please explain the importance of technical assistance for disadvantaged communities? What more could the Federal Government do to help disadvantaged communities be more competitive in the State Revolving Fund application process? Ms. Chard?

Ms. CHARD. Great, thank you, Senator. Something I am very proud of that we have done in Oklahoma is we take that technical assistance challenge away. We invite in our communities, we will find communities that have similar compliance issues, have them all come in at the same time. We work through the application process with them. We can connect them to either EPA contracted technical assistance providers or other technical assistance providers in the State. We have a relationship, of course, with RCAP and also National Rural Water.

We also have formed a funding agency coordination team in Oklahoma, where we invite communities in and help them put together those funding packages, so that it maybe that they would benefit from a particular Federal loan, a particular Federal grant from another agency. And then a loan or a grant from Indian Health Service, a tribal nation, or the State financial assistance programs.

So that technical assistance funding that Congress makes available definitely plays a big role. If we can keep that money going to technical assistance providers, whether they be a private company, a non-profit or State agencies, that can go a long way to assisting our communities.

Senator CARPER. Thank you for that.

I am going to repeat the questions, Mr. Byrum. Two questions. Will you please explain the importance of technical assistance for

disadvantaged communities? That is one. The second half of the question is, what more could the Federal Government do to help disadvantaged communities be more competitive in the State Revolving Fund application process?

Mr. BYRUM. Great question. I am not sure that one answer will fit every bill. Again, it is the flexibility that we have been talking about.

But in this case, it is super important that they get that technical assistance they need. We have a relationship with Communities Unlimited down in Texas. They provide that in a lot of the areas in our basin where we serve. But this technical assistance will go a long way. But it is not going to go all the way, because they still have the issue of trying to produce the reports and the financials out of this black box to apply for loans.

So I think there needs to be some flexibility there. We are looking at municipal governments with steady revenues. We are not looking at a private industry that just got started that is trying to prove a credit, improve up their credit.

So I believe there is some room there that we can relax some of those financial requirements with the application, and possibly up front fund some of the preliminary engineering. If a detailed preliminary engineering report is required at that point, them somehow or other these small communities need help funding that preliminary engineering.

Senator CARPER. Thank you for that.

Ms. Morales-Pate, please, same question, same two questions.

Ms. MORALES-PATE. Thank you for the question. Both of them are very important. Obviously, the technical assistance piece is what we do. Technical assistance provides the work within the communities individually in helping them build the capacity.

Let me just say a little bit about the work that we do. We work with volunteers. These are community volunteers who are doing a second job that they are not getting paid for. So it is very important for them to lean on and guide them through this process.

One of the things I would like to say that I think is very important is, as we are talking about small communities, we consider 100 percent grant. Because even that itself doesn't mean that it is going to exempt them from all the requirements that are needed. They still will have to check a lot of boxes to get that money. They still have to meet a lot of the requirements.

But what is really keeping a lot of these communities from being able to succeed is the lack of expertise, the lack of economies of scale. So when we work with communities that are primarily operated and managed by volunteers, it takes a consistent set of technical assistance providers to see those projects through to the other side.

As far as what else can be done, one of the things that I haven't mentioned but I think is important to say is that the guidelines and the requirements are not designed for the size communities that we are discussing. From that point, we have a disadvantage. They are designed for municipalities that have the capacity, that have the staff, that have the resources, and we are competing with that. When that is something that our communities are going up

against, our chances of success have pretty much been taken away from us.

So it really takes technical assistance that is very committed to stay on top of those projects to make sure that communities succeed. But we need to do something about those requirements.

Senator CARPER. Good, thank you.

My next question would be for Ms. Chard and Mr. Byrum. Let me start with you, Ms. Chard.

Wastewater systems that serve small and rural communities typically have a relatively small ratepayer base from which to finance infrastructure projects. This makes it challenging for them to afford local cost shares for water infrastructure projects without ballooning costs for ratepayers.

At times, this may mean that critical maintenance is delayed, and sometimes it is actually forgotten. This only leads to more expensive repairs later on, and this kind of stuff we have seen in Jackson, Mississippi.

My question, Ms. Chard and Mr. Byrum, have you observed small and rural communities deferring needed maintenance and systems improvements? That is the first part of the question, have you observed small and rural communities deferring needed maintenance and system improvements?

Second, would you provide any or could you provide for us a couple of examples maybe of delayed maintenance being a problem for public safety and the environment? How can Congress help?

Ms. CHARD. I will give you a one-word answer to your first question, and that is, absolutely.

Senator CARPER. I don't get many one-word answers. Could you be more definitive?

[Laughter.]

Ms. CHARD. As far as what have we seen, we absolutely see the delayed maintenance. On the drinking water side, we sometimes see issues of, do we comply with one standard or another standard, because we can't afford to comply with both, so it is choose the lesser of two evils, which is very unfortunate.

On the wastewater side, years ago I was in the city of Lawton, Oklahoma, and as they were, the garbage truck was sitting at a stoplight, it sank up to its bumper because the sewer line beneath it collapsed. The reason it collapsed was they knew it had leaks, they knew it had cracks, but they had not been able to make the needed repairs. So they had a main sewer line that now had a trash truck sitting on top of it.

Senator CARPER. Say that again? Had a what sitting on it?

Ms. CHARD. Trash, a garbage truck sank up to its bumper and was sitting at a stoplight. The road collapsed. The trash truck went down to its bumpers because the sewer main collapsed due to lack of maintenance. That is a pretty substantial issue.

We have seen cases where, in northeast Oklahoma, that we had treatment plants fail and they went from not treating well to essentially discharging raw sewage into a river that is known for kayaking and floating the river. It is kind of rite of passage, everybody has done it at least once.

So now there was raw sewage in that pristine water body because of lack of maintenance.

Senator CARPER. That is a pretty good example. Do you want to yield to Mr. Byrum?

Ms. CHARD. Yes.

Mr. BYRUM. The answer is yes, they do defer maintenance. In some of the lower part of our basin, and the western Nueces County, it has actually gotten to the point in the collection system, and eventually it will rain again. During the last big rains we had there, they had to shut the school system down because, shut some elementary school systems, some junior high systems down, some buildings, because the sewage was backing up in the floor drains.

This is an issue, an issue that has to be taken care of. The only way these people are going to do it is through some grants, because they are poor communities.

Senator CARPER. OK. We don't always give our witnesses a shot, but any closing thoughts you want to leave with us before we wrap it up and I go vote on the floor? Ms. Morales-Pate, just a very brief closing thought?

Ms. MORALES-PATE. Senator Carper, thank you for the opportunity. Certainly, it is very much welcomed from the RCAP network to have the opportunity to bring up the issues that we deal with as technical assistance provider on the ground every day.

When we are talking about the sustainability of communities across the Country, we cannot have a conversation about economic development and sustainability if we are not talking about sustainable infrastructure on the ground. That being water and wastewater. For some of our communities, that reality is not going to happen unless we have grant dollars available to get them there. We cannot build the vertical infrastructure if the horizontal infrastructure is not there to support that.

So I really appreciate the opportunity for this conversation. I invite you to reach out to us for any questions. We will give you examples of how we work with communities every day and what more can be done. But certainly, I would once again stress the importance of considering grants to really be talking about long-term solutions for rural America. Thank you.

Senator CARPER. Thank you, ma'am.

Mr. Byrum, closing thought?

Mr. BYRUM. I can't thank you enough for allowing us to come up and talk. I am leaving here really pumped. I am really motivated, because the line of questioning, the comments seem to be right on track with what we are seeing.

Senator CARPER. Good.

Mr. BYRUM. I am convinced that we are going to find a way to make the State Revolving Loan Funds work for the smaller cities just as good as it has worked for the larger cities. It has done a very good job with the larger metropolitan areas. I am confident after leaving here today we will find a way to make it flexible enough and provide enough grant moneys that it will work for the small rural communities, too. Thank you.

Senator CARPER. You bet. I think there is a Chinese word for danger that is also a word for opportunity. Henry Ford, I never met Henry Ford, but I like to quote him. He once said this, I think it is relevant to what we are doing here today. He used to say, and I appreciate your positive, upbeat comments, but Henry Ford used

to say, if you think you can, or you think you can't, you are right. Isn't that good?

OK, Ms. Chard, do you want to take us home?

Ms. CHARD. Thank you so much, Senator Carper, for holding this hearing and for the work that this committee does. We are all in it together. We do have to figure this out.

I think I will go back to something I said in my opening statement, and that is setting standards doesn't protect public health and the environment or promote economic prosperity. It is figuring out how to comply that is going to protect our public health. We need the assistance at all levels of government to ensure that our small, rural, disadvantaged communities get to come along with the large, well-populated, well-funded cities.

I think we have to remember that we are all in it together, and partnership and collaboration is what it is going to take. I would love to be able to continue this dialog with the committee, however you would see fit. We have to figure it out. Thank you so much.

Senator CARPER. Our thanks to all of you. Thank you for putting up with the stop and go that we are going through right now. When you have all these committees that are meeting and voting, and we are voting on the Senate floor and trying to do the Lord's work here, it can be challenging.

Before closing, I want to thank all of you for taking the time to be with us today. Thanks very much for sharing your insights and opinions with us. It is enormously helpful.

I want to thank out staffs. We are Democrats and Republicans here, and we actually like each other, and we like working together, we like getting things done. I mentioned some of the major, major legislation that was literally formulated right here in this committee in the last couple of years, signed into law by the President.

One of my favorite quotes that we had in a hearing in another committee I used to chair was, bipartisan solutions are lasting solutions. I will never forget that. Senator John Barrasso was a witness before us on the Homeland Security, and that is what he said. I think it was the Homeland Security Committee. He said, "Bipartisan solutions are lasting solutions." We are pretty good at those.

You have helped make us be a little bit better by your testimony today and by your responses to the questions that I have asked. Again, our thanks to not just the members who were able to come, I know they are all busy, but I want to thank especially the staffs who make it possible for us to do this work on behalf of the people of this Country.

This is the end of the hearing, my staff gives me this boilerplate language. I will read it, or get into trouble. Again, I want to thank all of you for joining us today, some have come quite a way. Thanks for sharing your perspectives on clean water infrastructure systems for disadvantaged and underserved communities. There are a bunch of them in every State that we have in this Country. We look forward to our continued bipartisan work together to support these communities.

Before we adjourn, I need to address just a couple of formalities. Senators will be allowed to submit written questions for the record by close of business on Wednesday, November 29th. I will ask Sen-

ators to submit any written questions they have for the record by the close of business on Wednesday, November 29th. We will compile those questions and we will send them to each of you. We will ask you to reply to us by noon of that day.

[Laughter.]

Senator CARPER. No, not really. Just wanted to make sure you are listening. We will ask you to reply to us by Wednesday, 2 weeks later, Wednesday, December 13th.

That, as we say in Delaware, is a wrap. Thank you so much. God bless. We are adjourned.

[Whereupon, at 12:07 p.m., the hearing was adjourned.]

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