Questions for the Record

Keith Pugh, PE, PWLF

American Public Works Association President 2022-2023

Q: Mr. Pugh, you mentioned localities are facing costly increases from new or stricter regulatory requirements, could you go into greater detail what some of those might be?

A: Yes, for water infrastructure alone there are new regulations for PFAS in drinking water along with pending ones for wastewater, and by October 16, 2024, we are expecting a tighter Lead and Copper Rule. With an estimated 9.2 million lead service lines across the country, according to EPA's 7th Drinking Water Infrastructure Needs Survey and Assessment (April 2023), the total estimated cost to replace all lead service lines alone could exceed $90 billion. The national cost of the PFAS drinking water rules is estimated by the EPA to be upwards of $15 billion, or $1.5 billion annually. However, analysis requested by the American Water Works Association using EPA data shows the annualized cost of the final rule could be three times higher than the EPA's estimate. The updated cost analysis determined that during the next five years, more than 7,000 water system entry points will need capital improvement investments to install PFAS treatment systems for drinking water at a collective cost of from $37.1 billion to $48.3 billion. This is highly plausible given that EPA has already been forced to significantly revise upwards their cost estimates between the proposed and finalized rules. These combined with more pending rules will outstrip federal funds and force many communities to absorb much of the cost burden.

Additionally, more broadly there is still uncertainty with regards to the most recent update of the National Environmental Policy Act (NEPA) regulations in terms of the cost and ability to achieve compliance with the climate and community engagement provisions. We have witnessed advances in emissions reductions over the lifetime of projects and utilizing technology to better inform the public and receive feedback. However, there remains a lack of clarity as to how these metrics will be measured and they could counteract gains in streamlining from the agreement reached in the Fiscal Responsibility Act.

Q: Mr. Pugh, you mentioned that public works, thanks to advances in technology, is conducting more engagement with affected parties and collecting more data for analysis to base their decisions on, could you speak more to that?

A: Certainly, a lot of members like myself and their communities are on social media and using different channels through the internet to tailor communications and receive and process feedback from the communities public works serves in addition to traditional means like city and council meetings and other public meetings where we can interface with people in-person. Additionally, public works professionals are also embracing opportunities through the use of technology such as drones and other modeling that allows for better mapping of impacts of different scenarios. Increasingly public works are also exploring applications for Artificial Intelligence in these processes, and this is something APWA is working on keeping members

informed. We do this through online learning and seminars, but also our conferences like our big annual one, PWX which we just held in Atlanta.

Q: Mr. Pugh, in your testimony you reference litigation as the perfect being the enemy of the good, could you elaborate more on examples of that or types of projects like water infrastructure and transportation?

A: For water infrastructure, some of our members are dealing with older cities attempting to address combined sewer systems where stormwater and wastewater are mixed and discharged into larger bodies of water particularly when there is higher precipitation/rain. Unfortunately, some cities are hesitant to address this issue out of fear that the improvements they approve are deemed insufficient and result in litigation and substantially higher expenses as evidenced in the upcoming Supreme Court case, San Francisco vs. EPA. In the meanwhile, this means water quality in some communities sees further deterioration as actions are put off, which leads to more harm to the environment, like aquatic species, and further limits on public use. The same can also extend to levees and dams where communities are stretching these pieces of infrastructure past their useful life and risking failure, this can mean a lower quality of life from regular flooding or devastating consequences in terms of property destruction and loss of life from a major storm event.

For transportation, a possible good example is the Reconnecting Communities program, which is meant to help reconnect neighborhoods that were historically divided by highway construction. Unfortunately, there are already multiple cases going on such as in Portland, Oregon and Buffalo, New York that are delaying changes that would allow for the construction of new parks/greenspace by capping existing highways. These types of litigation also create a chilling effect amongst other communities that may reconsider pursuing such projects in the future. Additionally, the same can apply to mass transit projects which would allow more efficient movement of large groups of people and lower emissions, we have seen this happen before in cities like a light rail extension in Saint Paul, Minnesota and another in Los Angeles, California which took nearly five years to reach a legal conclusion after the Environmental Impact Statement (EIS) was issued.

Q: Mr. Pugh, in your testimony you indicated that the provision if errors or deficiencies were found was very important to your members, could you elaborate?

A: Yes, our members work every day to address issues with projects and the fact they can proceed during the agency's 180-day remediation period with other parts of the project is extremely valuable since this can help significantly limit delays. In turn, when the error or deficiency is addressed by the agency, our members can shift focus to working on that part of the project and thereby remain productive while looking out for the communities they serve in terms of safety and the environment. Public works professionals already make similar shifts in resources when dealing with projects that include federal and non-federal components in order to keep making progress towards completion and adhere to timelines.