



**Testimony of Chris Franklin**

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**“Building a 21st Century Infrastructure for America: Water  
Stakeholders’ Perspectives”**

**Presented on behalf of the National Association of Water Companies**

**House Transportation and Infrastructure Committee  
Water Resources and the Environment Subcommittee**

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Good morning, Chairman Graves, Ranking Member Napolitano, and Members of the Subcommittee. I am Chris Franklin, President and CEO of Aqua America and the current President-elect of the National Association of Water Companies (NAWC) – the association that represents the regulated private water service industry, as well as professional water management companies. I am pleased to join you today on behalf of NAWC to talk about water infrastructure and the actions the federal government can take to unleash innovative and sustainable solutions to meet this nation’s water infrastructure needs. NAWC believes that by embracing the powerful combination of public service and private enterprise - we can improve water infrastructure in communities across the country.

NAWC applauds you, Mr. Chairman, and this Subcommittee, for highlighting America’s water infrastructure needs and the solutions that will best address them. Effective removal and treatment of wastewater is important to the health and well-being of communities across the country. As we’ve witnessed in the aftermath of Hurricanes Harvey and Irma, resiliency planning and infrastructure improvements are critical to minimizing the impacts of these kinds of events.

NAWC members are located throughout the nation and range in size from large companies that own, operate or partner with hundreds of systems in multiple states to individual utilities serving a few hundred customers. Through NAWC’s various innovative business models, private water and wastewater professionals serve more than 73 million Americans, nearly a quarter of our country’s population.

Aqua America is a water and wastewater company that proudly serves over 3 million customers in eight states across the country. Aqua America’s employees have one mission – to protect and provide Earth’s most essential resource.

### **How Regulated Water Companies Work**

Regulated water systems have existed in the United States for well over 100 years. The regulated water utility sector is highly regulated both by the state public utility commissions (PUCs), which set the water and wastewater rates that may be charged, and by the EPA and the states for water and effluent quality. Regulated wastewater utilities serve approximately nine million Americans every day, providing a range of innovative solutions for safely and effectively protecting public safety and protecting the environment.

The regulated water utility sector is uniquely positioned to offer input to this committee because private water utilities, as regulated bodies, prioritize long-term planning. Investing in long-term infrastructure and implementing strategic planning processes are required by public utility commissions in the ratemaking process throughout the United States.

As a result of these investment and management strategies, regulated water companies are well positioned to take advantage of economies of scale, creating a more cost-effective utility.

Being able to spread costs of improvements that benefit customers - such as replacing aging infrastructure, customer billing services, fleet management, engineering, and other necessary business operations - over multiple systems across states or regions creates incredible efficiencies.

For example, Aqua America spends a significant amount of capital on replacing aging water and wastewater distribution pipe. In 2016, Aqua replaced over 130 miles of aging water infrastructure. Due to the large amount of pipe replacement, Aqua is able to buy distribution pipe in bulk at a lower price and has the expertise and knowledge to manage replacement projects in a safe, efficient and strategic manner. Not only is Aqua able to see cost efficiencies, replacing this aging infrastructure in a prudent and systematic way lowers the number of main breaks in the winter and ultimately, water quality customer complaints. All of this leads to cost savings and efficiencies.

As a result of oversight and business efficiency, it should not be a surprise that regulated water companies have a proven track record of consistently meeting the water and wastewater needs of communities in many areas of the country.

### **Regulated Utility Role in Investing in Clean Water Needs**

NAWC's members are working tirelessly to serve the public and communities across the U.S. through a variety of partnerships, ranging from regulated utilities and concessionaire arrangements to providing expert technical assistance and operating wastewater treatment plants under contract with the community.

Ensuring the high standard of quality the private water sector delivers requires extraordinary amounts of capital investment. NAWC estimates that its six largest members are collectively investing \$2.7 billion each year in their water and wastewater systems – and these six companies provide service to about six percent of the U.S. population. This is significant when one notes that the current total federal appropriation for the clean water and drinking water state revolving fund (SRF) programs are approximately \$2 billion annually.

Aqua has been a leader around the country in investing in water and wastewater systems. For example, at the request of our state regulators, Aqua purchased a wastewater system in Pennsylvania that was in significant neglect. The wastewater treatment plant was out of compliance and the Pennsylvania Department of Environmental Protection had conducted a stream study which indicated the small receiving stream was “dead” for three quarters of a mile downstream of the discharge location. After Aqua's purchase of the system and infrastructure improvements, the stream had recovered and within six months, minnows were seen in the stream downstream of the plant discharge.

## **NAWC's Recommendations for Water Infrastructure Investment**

In May of this year NAWC hired Pricewaterhouse Coopers (PwC) to execute a study which reported that overall, if a few changes were made to federal law, it could lead to an additional \$43 billion incremental private drinking water infrastructure investment; \$15-25 billion incremental private wastewater infrastructure investment; and generate \$20 billion investment potentially from public-private partnerships (not including any potential public sector investment).

This report validated what many of us in the regulated water sector already know – there are ways to identify and realize efficiencies and increased investment in the water infrastructure sector. Today, I'm going to focus on a few of the identified policies that would lead to these efficiencies for the Committee to consider. Those policies are:

- 1) Incentivize partnerships in the water sector
- 2) Lower barriers to regulated water company investments
- 3) Encourage effective utility management that requires financial viability and accountability for performance

### **Incentivize Partnerships and Consolidation**

While not a purely private water solution, incentivizing partnerships and consolidation in the water sector may be the policy change with the greatest impact – particularly in changing how communities invest in water infrastructure. Therefore, one recommendation I'd like to make is that Congress should consider helping systems that struggle by encouraging them to pursue partnerships and consolidation across systems.

There are over 50,000 drinking water systems in the U.S. and nearly 15,000 wastewater utilities. Many of these highly-fragmented drinking water and wastewater systems face numerous challenges, including:

- Limited access to capital
- Operational inefficiencies
- Challenging compliance with EPA regulations
- Reduced purchasing power

Traditional enforcement tools are not always appropriate or practicable as regulators strive to help systems come in to compliance. Therefore, I believe that encouraging them to partner with regional, state, or national groups that can help them is an appropriate step. Rather than punish these systems through forced compliance and coercion, they should be encouraged to be better stewards for the communities they serve.

While engaging a private water provider is often an efficient and cost-effective solution, there

are numerous impediments to more P3s, including the legal and financial liabilities of distressed systems. For example, liabilities for past noncompliance, which can range in the hundreds of thousands and millions of dollars, can be a “poison pill” to prospective new partners, owners, or operators of distressed systems. To solve this problem, Congress should consider providing a robust legal “safe harbor” to encourage more consolidation and partnerships, including investment.

### **Lower Barriers to Private Water Investments**

A second set of recommendations would be to lower barriers to regulated water company investments. All wastewater and drinking water systems in the country – whether they are government- or privately-owned – are ultimately public service providers and their customers are taxpayers that fund programs such as the SRF program. Despite this, there has been a long-standing prohibition against private entities being eligible for Clean Water SRF funding for treatment works and, although the EPA does not prohibit such access to the Drinking Water SRF, no less than 12 states have adopted such blanket prohibitions. Congress should seek to correct this imbalance by amending the Clean Water Act to ensure all wastewater utilities, regardless of their ownership model, are eligible for the Clean Water SRF and hold states accountable for granting all utilities equal access to these programs that every taxpayer helps support. Given the extent of the needs, it makes absolutely no sense to limit the private sector’s role in helping communities achieve their clean water needs. The fact is that funding for the Clean Water SRF program is paid for by all federal taxpayers including customers of private wastewater utilities and all federal taxpayers should have access to the cost savings the SRF program generates. Ownership structure—public, private, co-op—should be irrelevant.

To be clear, rate-regulated wastewater utilities’ debt is a direct pass-through cost to customers. Therefore, a low-interest SRF loan subsidized by federal taxpayers delivers a direct benefit in lower rates to the utilities’ customers exactly as it does with a municipal or other public system.

While we recognize that tax issues are not the jurisdiction of this Committee, NAWC has two priority tax issues that we want to highlight for you today. One of the most effective financing tools of the federal government for long-term, capital-intensive infrastructure projects is the private activity bond (PAB) – tax exempt financing for public-purpose projects, like water, that involve private sector participation. Congress should allow for greater use of PABs for water infrastructure projects.

Another area in the tax code where Congress can help spur more investment is in eliminating the “defeasance penalty”. In short, most municipal infrastructure projects are financed by tax-exempt municipal bonds and, as a general rule, the tax exemption on such bonds is lost if a private-sector business acquires a long-term interest in the project. The Internal Revenue Service has issued rules meant to give state and local governments a reasonable path for

preserving the tax-exempt status of these bonds in such an event – governments can take certain prescribed remedial actions to preserve the tax exemption. Unfortunately, as currently drafted, these remedies are not practicable for water or wastewater utility projects and, thereby, deter beneficial water consolidation and partnership projects.

### **Effective Utility Management (EUM) Requires Financial Viability and Accountability for Performance**

Finally, NAWC and its members support EPA's ten attributes of effective utility management endorsed by all major water and wastewater associations, including the American Water Works Association (AWWA), National Association of Clean Water Agencies (NACWA), Water Environment Federation (WEF), Association of Metropolitan Water Agencies (AMWA), Association of Drinking Water Agencies (ASDWA), and the Association of Clean Water Administrators (ACWA). These attributes insist upon practices such as financial viability, infrastructure stability and operational resiliency, which reflect the basics of financial, technical and operational capacity of sustainable utility management. And they are attributes that everyone agrees must be followed.

Failing and noncompliant water and wastewater systems not only create a growing financial burden, but they pose great risks to public health and the environment. According to EPA's compliance database, there are presently thousands of domestic wastewater systems that are in significant noncompliance. These rates of noncompliance are unsustainable. If we are to change the status quo, we must offer more "carrots and sticks" in the regulatory toolbox.

Utilities that receive federal assistance should be expected to develop and implement a financial plan that covers not only capital costs, but operation and maintenance, and rehabilitation and repair costs. In addition, it is reasonable for taxpayers providing federal assistance to expect performance in terms of meeting federal and state standards, protecting public health and the environment, and providing cost-effective services – not continuing noncompliance. Failing systems should no longer be subsidized without an expectation of financial and operational viability.

Full-cost pricing helps to ensure the financial viability of utilities, which then enables them to undertake needed maintenance of and upgrades to their facilities, both of which play a critical role in the systems' ability to provide safe and high-quality service to customers.

Therefore, our third recommendation would be that applicants for public dollars should demonstrate that they have fully accounted for the long-term costs of their projects, including any risks inherent in construction, operations, or maintenance, and have selected the delivery model that provides the best value. For a community to maintain and enhance the condition of its infrastructure long-term, water and wastewater utilities should be expected, at a minimum, to manage their assets based on a process where adequate repair, rehabilitation, and replacement are fully reflected in management decisions, including appropriate customer rates.

## Conclusion

In conclusion, NAWC recommends the following actions for Congress to take:

- 1) Incentivize partnerships in the water sector
- 2) Lower barriers to regulated water company investments
- 3) Encourage effective utility management that requires financial viability and accountability for performance

I sincerely appreciate your invitation to appear before the Subcommittee today and, along with my many colleagues in the National Association of Water Companies, look forward to continuing our work with you to ensure that all Americans benefit from improving this nation's water infrastructure, which is essential to our economy and quality of life. Thank you and I would be happy to respond to any questions you may have.