Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

Peter A. DeFazio
Chairman

Katherine W. Dedrick
Staff Director

Sam Graves
Ranking Member

Paul J. Sass
Republican Staff Director

February 18, 2021

## SUMMARY OF SUBJECT MATTER

**TO**: Members, Subcommittee on Water Resources and Environment
**FROM**: Staff, Subcommittee on Water Resources and Environment
**RE**: Subcommittee Hearing on "Building Back Better: The Urgent Need for Investment in America's Wastewater Infrastructure"

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## PURPOSE

The Subcommittee on Water Resources and Environment will meet in open session on Tuesday, February 23, 2021, at 11:00 a.m. in the Rayburn House Office Building, Room 2167, and by video conferencing via Cisco Webex, to receive testimony on "Building Back Better: The Urgent Need for Investment in America's Wastewater Infrastructure." The purpose of this hearing is to examine the current state of our clean water systems and receive testimony on the backlog of clean water infrastructure needs, current and future challenges, and the infrastructure affordability challenges facing communities and American households. The Subcommittee will hear from representatives of utilities, rural and tribal communities impacted by inadequate clean water infrastructure and affordability challenges, and the manufacturing and labor sectors who may offer recommendations for the Environmental Protection Agency (EPA) to address water infrastructure needs.

## BACKGROUND

### Clean Water Infrastructure Needs

America's water infrastructure is in need of further financial investment. According to the American Society of Civil Engineers (ASCE) *Failure to Act Report,* America's wastewater treatment infrastructure receives a grade of D+, which was included in ASCE's *2017 Infrastructure Report Card.*[1]

According to EPA's most recent (2012) needs survey, communities have documented at least **$271 billion** of investment over the next 20 years to bring their systems to a state of good repair.[2] As this assessment is almost a decade old, the current need may be higher. Given the current level of Federal

[1] American Society of Civil Engineers. 2017 Infrastructure Report Card. https://www.infrastructurereportcard.org.
[2] https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-2012-report-and-data.

investment to address these needs, States and local governments are covering more than 95 percent of the cost of clean water projects.[3]

These statistics indicate a need for increased investment in our Nation's water infrastructure, and the benefits are numerous. Investing in clean water creates thousands of domestic jobs in the construction industry and reduces the overall costs of operating and maintaining that infrastructure. According to the National Utility Contractors Association, every $1 billion invested in our Nation's water infrastructure creates or sustains nearly 28,000 jobs in communities across America, while improving public health and the environment at the same time.[4] In addition, clean water infrastructure helps prevent contamination of our Nation's waters that are relied upon by the recreational industry. People spend approximately $70 billion per year on recreational boating and fishing; that industry employs more than 150,000 people.[5]

**Impacts of COVID-19 on Wastewater Infrastructure Industry**

As a result of the pandemic, many households and communities across the nation are under financial strain. Accordingly, wastewater utilities are facing a decrease in revenue. The National Association of Clean Water Agencies (NACWA) estimates that the resulting financial impact on wastewater utilities will be around $16.8 billion, including a 20 percent drop in sewer revenues.[6] These challenges are on top of existing long-term insufficient investment in the Nation's water infrastructure.

To help address these challenges, Congress included $638 million in the *Consolidated Appropriations Act of 2021* (P. L. 116-260) for the Department of Health and Human Services (Administration for Children and Families—Children and Families Services Programs) to prevent, prepare for, and respond to coronavirus, and for necessary expenses for grants to carry out a low-income household drinking water and wastewater emergency assistance program.[7]

**Wastewater Infrastructure Needs of Tribal Communities**

While the majority of people living in the United States have access to high-quality drinking water and wastewater services, more than two million do not have access to adequate drinking water and sanitation.[8] A report from the U.S. Water Alliance and Dig Deep found that Native Americans are 19 times

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[3] Congressional Budget Office. Public Spending on Transportation and Water Infrastructure, 1956 to 2017. October 2018. https://www.cbo.gov/publication/54539.

[4] Statement of Doug Carlson, CEO, National Utility Contractors Association, before the Senate Committee on Environment and Public Works hearing, entitled "Information Gathering-Process on Draft Legislation" (April 27, 2020) (https://www.nuca.com/files/Gov%20Relations/EPW%20Water%20Infrastructure%20Legislation_NUCA%20Statement_April%2027%202020_FINAL.pdf)

[5] EPA 2012. The importance of Water to the US Economy, Part 1: Background Report. Office of Water, US Environmental Protection Agency. September 2012.

[6] National Association of Clean Water Agencies (NACWA), Recovering from Coronavirus (NACWA), https://www.nacwa.org/docs/default-source/resources---public/water-sector-covid-19-financial-impacts.pdf?sfvrsn=98f9ff61_2.

[7] The appropriation for this low-income household grants provision in the *Consolidated Appropriations Act of 2021* went to the Department of Health and Human Services, and therefore is not under the jurisdiction of the House Committee on Transportation and Infrastructure. However, the provision is expected to benefit municipal wastewater utilities, which are under the Transportation and Infrastructure Committee's jurisdiction, by helping utilities make up some of the sewer revenues they have lost.

[8] US Water Alliance and DigDeep, Closing the Water Access Gap: A National Briefing Paper (DigDeep Right to Water Project and US Water Alliance, 2019), http://uswateralliance.org/sites/uswateralliance.org/files/publications/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf.

more likely than white households to lack indoor plumbing.[9] According to the Indian Health Service, in fiscal year (FY) 2018, the agency-identified sanitation deficiencies included 1,837 projects with a total estimated cost of $2.78 billion.[10]

The Clean Water Indian Set-Aside (CWISA) program was established by the 1987 Amendments to the *Clean Water Act* (P.L. 100-4) to provide funding for wastewater infrastructure to American Indian Tribes and Alaska Native Villages. CWISA funds may be used for planning, design, and construction of wastewater collection and treatment systems. The EPA administers CWISA in cooperation with the Indian Health Service Sanitation Facilities Construction program.

Section 518(c)(2) of the *Clean Water Act* authorizes between 0.5 and 2 percent of the overall appropriations for the Clean Water State Revolving Fund (Clean Water SRF) for the CWISA program. Since FY 2016, Congress has appropriated either two percent of the Clean Water SRF or $30 million, whichever is greater, for the CWISA program.

**Clean Water Act Affordability**

Communities and governments at all levels face growing challenges in effectively managing the water resources necessary to support growing and shifting populations, thriving residential, commercial, industrial, and agricultural sectors, and healthy and productive natural environments. Many local governments also face complex affordability challenges—with some communities addressing shrinking rate bases, while others with growing populations facing increasing segments of their rate base that are unable to afford the rising costs of clean water. In short, local infrastructure needs can disproportionately impact those communities across the country least able to afford necessary repairs, replacements, and upgrades. Nationwide, water utilities and communities of all sizes seek to ensure clean, safe, accessible, and affordable water, all the while dealing with the challenges of extreme weather events and mounting concerns regarding water quality and quantity.

In 2017, the National Academy of Public Administration issued a report that examined the challenges local communities face in providing clean, safe, and affordable water and wastewater services.[11] This report concluded that the governmental responsibility to assure clean water that is also affordable to both communities and individuals has become an increasing challenge.[12]

First, the report recognized that water infrastructure in the United States is aging, imposing additional costs on communities to both upgrade and maintain deteriorating infrastructure from deferred maintenance.[13] Second, the report recognized the costs to communities to come into compliance with the *Clean Water Act* as an additional factor, and highlighted the importance of more cost-effective and innovative solutions, such as increased use of green-infrastructure approaches, stormwater recapture and reuse, and integrated planning, to address these challenges.[14] Finally, the report highlighted how affordability

[9] Id.
[10] Annual Report to Congress of the United States on Sanitation Deficiency Levels for Indian Homes and Communities. Fiscal Year 2018. Indian Health Service Office of Environmental Health and Engineering Division of Sanitation Facilities Construction.
[11] National Academy of Public Administration. Developing a New Framework for Community Affordability of Clean Water Services. October 2017. https://www.napawash.org/studies/academy-studies/developing-a-new-framework-for-community-affordability-of-clean-water-servi.
[12] Id.
[13] Id.
[14] Id.

is an especially critical issue for low-income customers throughout the United States, noting that, while average annual expenditures for water are generally low relative to other utilities, they represent a higher share of income for those with the lowest 20 percent of income.[15]

In the 115th Congress, Congress approved two bills to address some of the challenges highlighted in the NAPA report. First, Congress approved the *America's Water Infrastructure Act of 2018* (P. L. 115-270), which, among other things, expanded the eligibility for *Clean Water Act* grants to address sewer overflows and to capture, treat, and reuse wastewater and stormwater runoff. In addition, Congress passed the *Water Infrastructure Improvement Act* (P. L. 115-436), which codified the "integrated planning" concept that helps communities by providing them greater flexibility in meeting their requirements under the *Clean Water Act* while maintaining their obligation to achieve improvements in local water quality, as well as incorporating the use of green infrastructure approaches into the permitting and enforcement provisions of the *Clean Water Act*.

In addition, several bills to address wastewater affordability concerns have been proposed and debated in the 115th and 116th Congresses. One approach would amend the *Clean Water Act* to address the issue of water affordability at the household level by providing Federal assistance directly to utilities who would then apply those resources to cover the individual household costs for water and wastewater service rates. [16] This is similar to the approach taken in the *Consolidated Appropriations Act of* 2021 (P. L. 116-260) to address water and wastewater rate assistance in response to the COVID-19 outbreak. A second approach, such as that included in H.R. 1497 (as reported) and H.R. 2 (as passed the House) from the 116th Congress, would utilize existing *Clean Water Act* infrastructure investment authorities, such as the Clean Water SRF (title VI of the *Clean Water Act*), the Sewer Overflow and Stormwater Reuse Municipal Grants program (section 221 of the *Clean Water Act*), and other grant programs to provide communities with a greater share of Federal financial assistance in the form of a grant rather than a traditional Clean Water SRF loan.

**Federal Clean Water Investment: Clean Water State Revolving Fund**

For close to 80 years, Congress has provided Federal funds to municipalities to address local water quality challenges, including sewage treatment needs. Initially, this assistance was provided as direct grants to municipalities (covering 55 to 75 percent of the total costs of the projects). However, in 1987, Congress converted the direct grant program to a Clean Water SRF authority that provides funding directly to States which, in-turn, provide below-market rate loans to communities to finance local wastewater infrastructure needs (required to be fully repaid over a 30-year term).

The authorization of appropriations for the Clean Water SRF expired after 1994. Yet, Congress continues to fund this critical investment in our Nation's wastewater infrastructure through annual appropriations bills—providing more than $46 billion in Federal capitalization assistance to States since 1987—including an appropriation of $1.638 billion for the Clean Water SRF in the *Consolidated Appropriations Act of 2021*. In turn, according to the EPA this infusion of Federal capital to State revolving funds has leveraged over $138 billion in direct assistance to communities over this period.[17]

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[15] Id.

[16] H.R. 2328, the Low–Income Sewer and Water Assistance Program Act of 2017 (115th Congress); H.R. 4832, the Low-Income Sewer and Water Customer Assistance Program Act of 2019 (116th Congress).

[17] https://www.epa.gov/newsreleases/epa-highlights-increased-investment-water-infrastructure-through-state-revolving-funds

In 2014, Congress enacted amendments to the *Clean Water Act* which authorized States that provide assistance to communities under the Clean Water SRF program, to provide additional subsidization, including forgiveness of principal and negative interest loans to benefit a municipality that meets the affordability criteria of the State; or that seeks additional subsidization to benefit individual ratepayers in the municipality's residential user rate class that will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought.[18] In addition, in recent years, the annual appropriations bill for the EPA has included additional provisions to require States to use a portion of Clean Water SRF funding to provide communities with "additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants" as well as to reserve an additional portion of Clean Water SRF funding for "projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities."[19]

In the 116th Congress, the Committee on Transportation and Infrastructure approved H.R. 1497, the *Water Quality Protection and Job Creation Act of 2019*, by voice vote, and similar legislation was approved by the House as part of H.R. 2, the *Moving Forward Act*. This legislation would have reauthorized and increased the authorized level of Federal appropriations for the Clean Water SRF program at levels more commensurate with local water infrastructure needs, as well as reauthorized several existing *Clean Water Act* grant authorities. In addition, this legislation would have extended the existing green infrastructure reserve,[20] established set-asides of Federal resources for rural and small communities, codified set-asides for Indian Tribes and U.S. Territories, and included several provisions to address the cost of wastewater service to low-income customers and households. H.R. 1497 would also have made changes to the *Clean Water Act* regulatory program to allow National Pollutant Discharge Elimination System (NPDES) permits for certain municipalities of up to 10 years, as well as established a process to prevent States from "administratively" extending permits beyond their statutorily-defined duration (typically five years) without review and updating. These regulatory provisions were not included in H.R. 2. No further action was taken on these proposals in the 116th Congress.

[18] Section 5003 of Pub. L. 113-121.

[19] The *Consolidated Appropriations Act of 2021* requires States to utilize 10 percent of their Clean Water SRF capitalization grant for this subsidy/grant component, and 10 percent of their capitalization grant for green infrastructure and water and energy efficiency projects.

[20] This provision requires States, to the extent that there are sufficient projects or activities eligible for assistance, to utilize not less than 15 percent of their Clean Water SRF capitalization grant for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

## WITNESSES

**David J. Berger**
Mayor
City of Lima, Ohio
*on behalf of the U.S. Conference of Mayors*

**Bill Sterud**
Chairman
Puyallup Tribal Council
Tacoma, Washington

**OJ McFoy**
General Manager
Buffalo Sewer Authority
*on behalf of the National Association of Clean Water Agencies*

**Tom Teske**
Vice President and General Manager
EJ Americas
East Jordan, Michigan

**Brenda Coley**
Co-Executive Director
Milwaukee Water Commons
Milwaukee, Wisconsin

**David Mallino**
Legislative & Political Director
Laborers International Union of North America