



Written Statement for the Record

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On behalf of the National Association of Counties

For the Hearing
EPA's Lead and Copper Proposal: Failing to Protect Public Health

Before the Subcommittee on Environment and Climate Change
Committee on Energy and Commerce
U.S. House of Representatives

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Chairman Tonko, Ranking Member Shimkus and distinguished members of the subcommittee, thank you for holding today's hearing on reducing lead exposure in drinking water—and for the opportunity to testify on behalf of the National Association of Counties (NACo) and the nation's 3,069 counties we represent.

My name is Cindy Bobbitt and I am a Commissioner from Grant County, Oklahoma where I've served on the Board of Commissioners since 2004. Additionally, I am on the NACo Board of Directors and serve as the association's Central Region Representative, Vice-Chair of the Transportation Policy Committee and a member of the Rural Action Caucus.

In addition to my work as a county commissioner, my husband and I operate our family farm that was established in 1893, that my husband's great grandfather Bobbitt staked in the Land Run of 1893. We raise wheat, feed grains, alfalfa and have a cow/calf operation. At the age of nine, I started driving a tractor for my dad on the family farm and I learned first-hand about work and moral ethics.

I am honored to be only one of seven women who serve as a county commissioner in Oklahoma out of the 231 county commissioners in the state—and I am strongly passionate about my county's infrastructure needs, including water infrastructure.

Grant County is a very rural county located approximately 120 miles north of Oklahoma City and serves a population of approximately 4,500. Our local economy has largely been based on agriculture and our principal crops include wheat, corn, soybeans, feed grains and alfalfa. We also have natural resources like oil and gas and produce livestock like cattle, hogs and horses.

Counties are highly diverse, not only in my state of Oklahoma, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, public health and environmental responsibilities. Counties range in area from 26 square miles (Arlington County, Virginia) to 87,860 square miles (North Slope Borough, Alaska).

The population of counties varies from Loving County, Texas, with just under 100 residents to Los Angeles County, California, which is home to close to ten million people. Of the nation's 3,069 counties, approximately 70 percent are considered "rural," with populations less than 50,000, and 50 percent of these have populations below 25,000. At the same time, there are more than 120 major urban counties, which collectively provide essential services to more than 130 million people every day.

Many of counties' responsibilities are mandated by both the state and federal government. While county responsibilities differ widely, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and critical infrastructure, assessment of property taxes, record keeping, running elections, and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment and workforce training, 911 and emergency management, land use planning and zoning.

Many counties also have the responsibility to provide water services and have the authority to own and operate drinking water systems.

Today's hearing addresses an important issue for county governments as we assess challenges and opportunities to reduce lead in our drinking water. **Accessibility to a reliable supply of clean water is vital to our nation, and counties stand ready to work with our federal partners to ensure every American has access to clean drinking water.**

As a county commissioner, I have seen firsthand the significant role local governments play in providing clean drinking water for residents and lowering lead contamination.

Today, I will discuss several key points for your consideration as the subcommittee assesses challenges and opportunities at the local level as we work to eliminate lead contamination in our drinking water:

- 1. As regulators and regulated entities, county governments play a key role in providing clean drinking water and are committed to reducing lead exposure.**
- 2. Due to limited local resources and mounting federal and state mandates, counties are challenged to make long-term budget investments.**
- 3. Counties need clear, understandable and practicable federal policies to administer national water standards successfully.**
- 4. Further federal investments and early, consistent and meaningful engagement with intergovernmental partners is vital in the development and implementation of effective drinking water policies, programs and regulations.**

First, as regulators and regulated entities, county governments play a key role in providing clean drinking water and are committed to reducing lead exposure.

As both regulators and regulated entities, counties are responsible for protecting local air, water and land resources through delegated authority under state and federal laws. We enact zoning and other land use ordinances to safeguard valuable natural resources and protect the safety of our citizens.

In the arena of the Clean Water Act (CWA), counties play a dual role as both co-regulators and regulated entities in protecting the environment and providing public water services for our residents and businesses. As regulators, counties are often responsible for controlling water pollution at the local level. We can enact rules on illicit discharges, remove septic tanks and adopt setbacks as part of land use plans. We are often responsible for water recharge areas, green infrastructure, water conservation programs and pesticide use for mosquito abatement. Counties also provide extensive outreach and education to residents and businesses on protecting water quality and reducing water pollution to prevent exposure from toxic chemicals, such as lead.

The U.S. Department of Homeland Security estimates that there are just over 153,000 public drinking water systems in the U.S. that provide potable water to almost 90 percent of the population (just under 300 million

people) and more than 16,000 wastewater treatment systems that service 75 percent of the population. Approximately 47 percent of community (drinking) water systems are locally government owned.

Clean drinking water is an important issue in my county. Covering over 1,000 square miles with a population of 4,500, it is vital that clean drinking water is readily accessible to everyone. As I mentioned, I live on the farmstead that was staked in the land run of 1893. Water-wells were dug but the water was briny, salty and not fit for man nor animal. Over time, cisterns to catch rainwater were developed for homes and man-made ponds for livestock. As families grew, so did the need for water, so people moved to where water was, generally to towns that had managed water systems.

In my county, there are total of 11 water systems. These include systems owned by local governments and private utility companies and rural water districts. These systems serve as few as 28 people and up to 1,172 people. Counties are responsible to partner and coordinate with these water systems to ensure water quality standards and needs are met.

For example, during major flooding events, our county works closely with municipalities and water systems to ensure the public has access to clean drinking water. In multiple instances, the county has supported local water systems through providing generators to ensure clean drinking water was maintained during and after emergencies and natural disasters.

Counties recognize the dangers of lead exposure and are committed to the U.S. Environmental Protection Agency's efforts to eliminate lead contamination in all of America's drinking water systems. We support the federal government's efforts to lower lead exposure to protect our residents, especially children who are most vulnerable. Counties stand ready to work side-by-side with our federal and state partners to ensure the health, well-being and safety of our citizens.

My county takes water quality seriously and we rely heavily on a strong, state and local intergovernmental relationship. Through coordinated efforts between the Oklahoma Department of Environmental Quality, county governments and local water systems, communities varying from small to large populations can routinely monitor and test for water contamination. This is vital because much of our housing infrastructure predates 1987 plumbing codes, increasing the likelihood of corroded pipes, which leads to lead exposure.

Regardless of whether a community is rural or urban, our residents rely on safe and reliable water systems. However, counties are facing a growing number of challenges resulting from aging infrastructure, increased federal and state requirements, and rising costs to meet infrastructure needs and environmental mandates.

Second, due to limited local resources and mounting federal and state mandates, counties are challenged to make long-term budget investments.

Regardless of size, fiscal constraints and tight budgets are the reality for most counties. The rapid increase in state and federal unfunded mandates adds another layer of fiscal strain. In many instances, counties are mandated to provide a growing number of services while operating under greater state and federal restrictions on how we generate revenue.

In fact, 45 states impose some type of limitation on county property taxes, affecting the main revenue source for counties. According to a 2016 NACo survey, 44 percent of counties reported reducing or eliminating services in their last fiscal year due to revenue constraints and increasing costs associated with providing mandated services.

In my state of Oklahoma, we face several challenges that limit us from meeting our water delivery goals. For example, the State of Oklahoma limits a sales tax option for counties to two percent. Grant County, through the vote of the people, has approved a 1.25 percent sales tax, with 1 percent being divided between 12 entities for rural fire departments, ambulance services, the sheriff's department and emergency services, with the other quarter percent for the Grant County fairgrounds improvement. None of these funds go to water infrastructure. Furthermore, ad valorem taxes—also known as property taxes—in Oklahoma legally cannot go to fund any water infrastructure. Instead these funds are dedicated to support schools, jails, courthouses and health departments, just to name a few.

In addition to these challenges, enforcing the EPA's proposed Lead and Copper Rule would place considerable fiscal strain on local governments, where budgets are already stretched thin. Counties support the goal of replacing all lead service lines in the U.S., but it's important that our federal partners recognize the growing number of mandates on local governments and understand the full picture of county public safety priorities.

According to the EPA, administering the proposed rule is estimated to cost local water systems between \$131 million and \$270 million annually. Over 30 years – the expected timeline to replace all lead service lines in the U.S. – local water systems could be on the hook for up to \$8.1 billion. In reality, replacing all lead service lines could cost billions more.

EPA estimates there are between 6 to 10 million lead service lines in the country. Based on preliminary estimates, the average cost of replacing the line is \$4,700, although these costs could range from \$1,200 to \$12,300 depending on the length of the line. Using these estimates, replacing all lead service lines would cost local water systems between \$25.6 billion to \$47 billion, creating an enormous unfunded mandate for local governments.

The estimated costs to administer the proposed rule would create budgetary imbalances that would require county governments to cut other critical local services like fire, law enforcement, emergency and education, or increases in local taxes and fees on constituents to make up the difference.

Furthermore, communities with low-income populations, such as mine, are more at risk of lead exposure, due to older housing infrastructure that use lead service lines. Counties with low-income populations, are already limited in raising additional revenues. This raises major concerns as a county commissioner on how we are going to pay for this while maintaining public services.

The median income in my county is \$28,977 and \$35,833 for household income. As I mentioned previously, the population of Grant County is 4,500, a small tax base to raise additional revenues. Without direct federal funding specified for implementing the proposed rule, counties like mine would experience significant financial challenges and be forced to either cut critical local services or raise local taxes or fees. This would place a substantially undue burden on underserved communities and reduce our quality of life.

It's not about replacing a red or blue service line, it's about replacing hazardous water lines regardless of geographic locations and socioeconomic conditions. While balancing other community needs, local governments with vulnerable populations need resources to protect the public while maintaining our quality of life.

Third, counties need clear, understandable and practicable federal policies to administer national water standards successfully.

Counties are often responsible for implementing programs established by the states and federal government. As previously mentioned, we function as co-regulators with the states and federal agencies, especially when it comes to environmental issues. Given these important intergovernmental roles and responsibilities, federal regulations and guidelines are more effective if they can be easily administered by counties, regardless of populations and budget size.

As the EPA moves forward with this rulemaking process, we offer several areas of comments, concerns and recommendations to make the proposed rule more effective, easily implementable and cost effective for local governments. Below are three concerns along with recommendations to improve the proposed rule and allow implementation success:

- **Legal and liability concerns:** The proposed rule requires water providers to replace a minimum of three percent of lead service lines above the Action Level of 15 ppm annually. Requiring water systems to replace lead service lines on private property raises liability and legal concerns. Counties recommend provisions within the proposed rule that limits this liability and prevent local governments and water providers from being subject to costly legal battles. Moreover, the proposed rule does not address how local governments or water providers should legally handle property owners that refuse to replace lead service lines or are unable to afford the cost of replacement. Counties request further guidance on this concern.
- **Consumer notification concerns:** The proposed policy requires water providers to notify consumers within 24 hours if water systems are at the Action Level. Counties agree with the EPA that consumer notices are necessary to protecting the public health, but we encourage the agency to clarify how the notices should be delivered and consider more flexible notification standards to allow counties to better address lead exposure. Typically, 24 hour notifications are usually limited to immediate health emergencies. While lead in water is a public health concern and people should be notified expeditiously, considering it an immediate public health emergency may cause unnecessary public distress. A proactive and balanced risk communication approach is necessary to properly address resident's concerns.
- **Lead service line inventory concerns:** The proposed rule requires all water service providers to prepare and update a comprehensive lead service line inventory within three years. Counties support the EPA's goal to collect a detailed inventory of all lead and copper lines, however, three years might be too short of a timeframe. Conducting an inventory of all lead service lines may prove extremely difficult to determine without costly excavations. This is especially true for small and mid-sized communities. Counties

recommend allowing additional flexibility for conducting a survey as well as adding additional time if requested by the water system.

Lastly, further federal investments and early, consistent and meaningful engagement with intergovernmental partners is vital in the development and implementation of effective drinking water policies, programs and regulations.

Our current water systems across the U.S. are rapidly reaching the end of their lifespans. To ensure that our local communities remain healthy, vibrant, safe and economically competitive, America's counties must be able to upgrade and modernize our water systems to meet existing water quality management requirements and further regulations as proposed under the Lead and Copper Rule.

According to the American Society of Engineers, the estimated amount needed to upgrade the nation's drinking water infrastructure is between \$384.2 billion and \$1 trillion by 2030. However, annual federal appropriations to meet federal standards, via clean water and drinking water state revolving funds, have increased modestly, with current levels at \$2.77 billion for FY 2020. This lack of growth amidst increasing need has required state and local governments to increase our funding and financing substantially. In fact, 96 percent of all public spending on water and wastewater utilities (\$105 million) in 2014 was by local and state governments, according to the University of North Carolina. In 2016 counties spent a total of \$122 billion on building public infrastructure and maintain and operation public works. Despite facing further budget shortfalls, counties continue working to protect and improve the quality of local water systems.

Counties urges Congress to increase funding levels to existing federal programs that will support the successful implementation of the EPA's proposed Lead and Copper Rule and allow us to make further investments to our overall water infrastructure. Specifically, we request additional funding to the following programs:

- EPA Drinking Water State Revolving Loan Fund
- EPA Water Infrastructure Improvements for the Nation (WIIN) Act grant programs
- EPA Water Infrastructure Finance and Innovation Act (WIFIA) financing program
- HUD Community Development Block Grants
- USDA Rural Development Water and Waste Disposal Loan and Grant program

In addition to these existing programs, counties urge Congress to provide direct, flexible federal funding options to local governments that can be used specifically to implement the proposed rule. New competitive grant programs authorized and appropriated at the federal level would facilitate the ability of counties to provide safe, clean and reliable drinking water for all Americans.

Second, as county officials, we are the level of government closest to the people and directly accountable to our constituents. As a result, meaningful consultation with counties and local governments early and often in the legislative and rulemaking process is imperative to reduce the risk of unfunded mandates and produce more pragmatic and successful strategies for implementing federal policies, including any around clean drinking water.

For intergovernmental consultation to be truly meaningful, Congress and federal agencies must engage state and local governments as partners, who actively participate in the planning, development and implementation of federal rules. As with any potentially new policy, program or regulation, counties believe we should have a seat at the table as provisions that may impact our ability to serve our residents are crafted. We must have a robust federal-state-local partnership that preserves local decision-making as any legislation is promulgated around services that are a function of county government.

Conclusion

In conclusion, counties stand ready to work with our federal partners to develop policies that can help both improve the environment and protect the health and safety of our residents. Federal policies and programs developed with only the impact on the federal treasury in mind and do not consider the impact on state and local governments, jeopardizes the ability of local governments to fulfill our responsibilities.

Counties continue to serve as reliable partners in implementing federal regulations and policies to meet our shared goals and protect residents. We hope that federal agencies show an even greater willingness to partner with state and local governments on these issues moving forward.

Thank you again for the opportunity to testify on this important topic.