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Committee on Environment  
and Public Works

Washington, D.C.

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IMPLEMENTING IIJA: PERSPECTIVES ON THE DRINKING WATER AND WASTEWATER  
INFRASTRUCTURE ACT

Wednesday, March 15, 2023

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee, met, pursuant to notice, at 10:05 a.m. in room 406, Dirksen Senate Office Building, the Honorable Thomas R. Carper [chairman of the committee] presiding.

Present: Senators Carper, Capito, Cardin, Markey, Kelly, Cramer, Lummis, Sullivan, Ricketts.

STATEMENT OF THE HONORABLE THOMAS R. CARPER, A UNITED STATES SENATOR  
FROM THE STATE OF DELAWARE

Senator Carper. Good morning. Let me call this hearing to order.

We are here today to examine the implementation of the Drinking Water and Wastewater portions of the Bipartisan Infrastructure Law. As you will recall, this historic bipartisan law is helping to deliver clean drinking water to millions of households and schools across our Country.

Before we do that, let me start by saying how grateful I am to both panels of witnesses that are joining us today, including representatives of drinking water, clean water, as well as small and large utilities. We are particularly appreciative that Assistant Administrator Radhika Fox, who leads EPA's Office of Water, has joined us. Welcome.

To all of our guests, we have a lot of folks, Senator Capito, I don't think we have had that many photos before a hearing in a long time. We want to remember this day.

Yesterday, the Biden Administration took a major step in addressing the presence of toxic forever chemicals known as PFAS in our drinking water. This announcement was some 20 years in the making. It is an issue that is very important to us as it turns out to West Virginia and to Delaware, and frankly, to all the other 48 States across the Country. I want to commend the President; I want to commend Administrator Regan, Assistant Administrator Fox and all of EPA for proposing a thoughtful, science-based, national drinking water

standard for PFAS.

This critical step to protecting our drinking water comes on top of the President calling for significant investments to protect our public health and environment in his proposed 2024 budget released last week. In his budget, the President requested more than \$12 billion for EPA, \$12.9 billion, a 19 percent increase from the 2023 enacted level. More than \$4 billion of that proposal is reserved for water infrastructure. That includes an additional \$219 million for grants to reduce the amount of lead in drinking water, to test for and remove lead in schools, and to replace lead pipes.

This budget builds on the committee's work in the Bipartisan Infrastructure Law to invest in our Nation's water infrastructure, which brings us to the topic of today's hearing: oversight of the implementation of the drinking water and wastewater portions of the Bipartisan Infrastructure Law.

As we have discussed, Democrats and Republicans on this panel, it is not just enough to enact landmark legislation like this, but it is important that it be appropriately implemented and that we exercise our responsibilities with respect to oversight. That is part of what we are doing here today.

Our work on this committee to improve our water infrastructure is personal to me. We have some folks from West Virginia who have joined us, welcome. People from West Virginia, raise your hand. If you would like to be from West Virginia, raise your hand.

[Laughter.]

Senator Carper. Almost everybody, for the record.

Our work on this committee is to improve our water and infrastructure. As I said, it is personal to me, rooted in my faith and my family's history in Raleigh County, West Virginia. Some of you may recall that Matthew 25 calls on all of us to actually care for those that are in need, the least of these, to give those that are thirsty something to drink. For me, this includes ensuring that Americans have access to clean, safe, and reliable water service.

Some of you may recall, I was born in Beckley, in a coal-mining town in the southern part of the State. For two of those six years that we actually lived there, my first six years of my life, we lived alongside a stream. Our Ranking Member has heard of Beaver, she's been to Beaver right outside of Beckley many times. There is a creek that goes through there called Beaver Creek. My sister and I lived alongside Beaver Creek.

We would play along the banks of that creek. We would try to catch small fish, sometimes frogs, and we were never allowed to eat any of them. Nor were we allowed to drink the water from Beaver Creek. That is because many of the nearby septic tanks were not well-maintained and as a result raw sewage and other pollution could seep into that creek. At the time, our situation was not too different from that of many other small communities in West Virginia and across the Country.

In the years that followed, our government has responded to this water crisis by creating grants and later loan programs that made it easier for communities across our Country to build and operate drinking water and wastewater treatment systems. Over time, these

programs languished and were in dire need of updating.

That is why I, along with Ranking Member Senator Capito, Senator Cardin, Senator Lummis, Senator Duckworth, Senator Cramer and many other members of this committee and off this committee joined forces to address this need. We worked in an overwhelmingly bipartisan way to draft the Drinking Water and Wastewater Infrastructure Act. You will recall that our legislation included historic investments in EPA's State Revolving Funds. Those funds were the primary vehicle for State and local governments to finance water infrastructure projects throughout America.

We advanced our legislation out committee unanimously and later passed it out of the full Senate by a vote of 89 to 2. If the American people are looking for bipartisanship, they need look no further than this committee and its work on infrastructure. This water bill, combined with our committee's historic highway legislation, roads, highways, bridges, served as the foundation of the Bipartisan Infrastructure Law, which President Biden signed into law in November 2021, a happy day for all of us.

The Bipartisan Infrastructure Law invested an unprecedented \$55 billion to improve drinking water and wastewater systems in communities across our Country, and it was paid for, fully offset. It remains the single largest water infrastructure investment in our Nation's history. Let me repeat that: this remains the single largest water infrastructure investment in our Nation's history. Now, EPA has the responsibility of putting these investments to work for all of the American people.

Today's hearing is an opportunity to gain a deeper understanding of how this process is going. This hearing will allow us to explore future opportunities to improve the way we invest in our drinking water and wastewater infrastructure. That includes investigating how the Bipartisan Infrastructure Law programs are benefiting communities with the greatest need and what additional authorities or changes might be needed to make the program function better.

I like to say, everything I do, I know I can do better. As proud as we are of this legislation, we know that we can still improve on it further, for example, is there more than could be done to adapt these programs to changes in our climate and our population and the age of our infrastructure.

As I said earlier, we look forward to hearing from our distinguished panels of witnesses today. Before we do, let me turn to Senator Capito for her opening remarks. Senator Capito, you are recognized.

[The prepared statement of Senator Carper follows:]

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES  
SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Capito. Thank you, Mr. Chairman, and thank all of you for being here today. I would like to thank Assistant Administrator Fox for not just being here today but for the lines of communication that you have kept open, as you promised in your hearing when you came before this committee. You have stayed true to your word. I certainly appreciate that, from my perspective.

I would also like to thank you for finally, after many years of me banging the gavel and the gong and also with the Chair to set that safe drinking level for PFAS. That is going to have many impacts across the Country. Certainly, safe, clean, and healthy water is at the top of the list for all of us.

This committee values your perspectives on the challenges and other witnesses' as well, facing this Nation's water infrastructure, as well as your insights on implementing the effective solutions to these challenges. Today's hearing is focused on a topic that is of critical importance, and the Chair has covered much of this, to the health and well-being of our communities, our environment, and our economy: clean and efficient drinking water and wastewater systems.

All Americans deserve this. We deserve to have reliable, affordable water and sanitation. I am very proud of the bipartisan work of this committee that we accomplished in the last Congress to address America's drinking water and wastewater investment backlog. It is such a backlog. The DWWIA Act, as we call it, was written by this committee and is a key pillar of the Infrastructure Investment



and Jobs Act. It created new programs, opportunities, and support to address current water infrastructure needs and ongoing challenges in small, rural, and disadvantaged communities.

In this hearing, we will explore the current state of our Nation's water resources, the challenges that we face in protecting them, and how we can implement policies in the IIJA to help ensure that every person has access to clean drinking water. I look forward to hearing from our expert witnesses and engaging in a thoughtful and productive discussion on this crucial issue.

The IIJA authorized \$55 billion in funding, as the Chairman said, the largest investment ever, for a range of water infrastructure programs, including grants for small and disadvantaged communities, funding for lead service line replacement, and support for innovative water technologies, as well as funding for wastewater treatment and stormwater management. These funding opportunities provide new resources to address the current challenges facing our water infrastructure.

Many communities, certainly in our States, are 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, small, rural and disadvantaged communities often lack the resources and technical expertise needed to address these challenges, leaving us very vulnerable to water quality problems and public health risks.

IIJA programs offer a wide range of funding opportunities to help address these challenges, from grants and low-interest loans to

technical assistance. These funds can support critical infrastructure upgrades including the replacement of lead service lines, the construction of new treatment facilities, I have actually toured some of these, as I think you have, and the implementation of advanced treatment technologies.

Additionally, the funding can support capacity-building initiatives, including workforce development. Every water system I go to is really down on the numbers of people who are interested in working in water, but also the retirements that we are seeing across the board in the workforce is really putting a strain on our systems. So we need help there. We need to help communities build the expertise needed to manage and maintain their water systems, and frankly, we need to get the next generation excited about this as an opportunity and a career of the future.

Despite these significant funding challenges, ongoing unmet needs in small, rural, and disadvantaged communities still remain a concern. As they have said, they lack some of the technical expertise. As we work to implement these programs, it will be important to ensure that the resources are targeted to the communities that need them the most and the necessary technical assistance and training programs to support them.

As the EPA begins to deploy these significant financial investments in our infrastructure, I have concerns about how the agency is planning to implement some of the directive from Congress. We were very explicit in our bills, I think. The Biden Administration has prioritized its environmental justice agenda. But it has not been

shy to pull in, I think, political factors as they are doing that that are unrelated to water quality and health, key conditions for how this money should be spent, and even funding for States as it is reviewed by the agency. I am concerned that projects will not be considered based solely on needs related to the explicit statutory directives of safeguarding human health, keep rates affordable, and protecting the environment.

While all of us support empowering communities through economic development, it is important that we recognized that Federal investments to the Safe Drinking Water Act and Clean Water Act, as amended by the IIJA, should be directed to projects where the needs are most acute and in line with what Congress directed the agency to do in the statute. We shouldn't be sidetracked from responsibly investing in our aging infrastructure because we have such a historic bipartisan success here.

Water systems do not align neatly with the Administration's effort to use census tracts to define EJ communities or politicizing the distribution of funds. We have run into this in West Virginia in some of the definitions. Congress was clear: funding through DWWIA should encourage State flexibility through funding pots like the SRFs, and other grant programs should prioritize the need.

Funds were firewalled between systems of various sizes to make sure that rural communities, small towns and big cities all got their fair share without taking too big a slice of the pie. The EPA should implement these programs pursuant to the Congressional intent, which resulted from some hard-fought bipartisan compromises.

I am committed to working on these issues that are so important to me, the citizens of West Virginia, and our Country.

I will close by saying what everyone in attendance knows: water infrastructure investments are critical to public health, environmental health, and economic development. I want to see these new investments create a better quality of life create more jobs, and drive the kind of quality of shared health benefits that we all care about.

I also want to welcome in the next panel Kathy Emery from the great state of West Virginia and also Raleigh County. She is here with her husband Roy, her son Taylor, who goes to West Virginia University and her other son is a graduate student at West Virginia University as well.

Thank you, Mr. Chairman.

[The prepared statement of Senator Capito follows:]

Senator Carper. Thank you.

To our visitors from Raleigh County, my grandfather, great-great-great-grandfather was one of the co-founders of Raleigh County. Our family was present at the creation. It is a special honor to have you here with all of us today.

I ride back and forth on the train just about every day to Delaware. The other day I was talking with someone and he used these words to talk about integrity. He said, integrity, if you have it, nothing else matters. Integrity, if you don't have it, nothing else matters. The same, I think, could probably be said of water. If we have it, we have good, clean drinking water, it is not that nothing else matters, but that is hugely, hugely important to sustain life.

As governor, and I know my other colleagues have spent a lot of time on economic development and job creation in their States, I never talked to a business large or small who was looking to locate or expand a business who was interested in doing so in a place that didn't have good, clean drinking water. It is critical in order to be successful in job creation and maintaining those jobs.

With that having been said, it is now time to hear from our first panel. Joining us today is Radhika Fox, Assistant Administrator for the U.S. Environmental Protection Agency's Office of Water. In her role, Assistant Administrator Fox works to ensure that drinking water is safe, wastewater is safely returned to the environment, and surface waters are properly managed and protected.

We thank you for the work you do. You are recognized and may proceed at this time. Thank you so much for joining us.

STATEMENT OF THE HONORABLE RADHIKA FOX, ASSISTANT ADMINISTRATOR,  
OFFICE OF WATER, ENVIRONMENTAL PROTECTION AGENCY

Ms. Fox. Thank you so much, and good morning, Chairman Carper, Ranking Member Capito, and members of the committee. I am so honored to join you to provide an update on EPA's implementation of historic water infrastructure investments through the Bipartisan Infrastructure Law.

Really, I just need to start by saying thank you. It really is the bipartisan leadership of this committee that was so instrumental in securing over \$50 billion to invest in clean and safe water and communities across America.

I also want to take a moment to express my gratitude to the incredible career staff at EPA who are really the ones implementing this. I have some of the leadership from the Office of Groundwater and Drinking Water here with me today. It is really because of their dedication, their technical expertise, their hard work that we are delivering on the Bipartisan Infrastructure Law as promised to the American people.

So let me give you a brief report on how implementation is going at the EPA. Congress provided the majority of the water funding through the State Revolving Loan Funds program, the SRFs, about \$43 billion. In March 2022, EPA issued our SRF implementation memo. That document established key priorities consistent with the legislation that has really been our north star for how we have been implementing this bill.

The key priorities that we outlined in that SRF implementation

memo were one, to provide flexibility to States in meeting their local water needs, increasing investment in disadvantaged communities, making rapid progress on lead service line replacements, addressing PFAS and other emerging contaminants, advancing climate adaptation and mitigation, and supporting good jobs here in America.

We engaged very closely with the States as we developed this implementation memo. We have a State SRF work group. That has really set the foundation for a robust partnership with the States in implementing the Bipartisan Infrastructure Law.

So here we are about one year later, and I am delighted to report that 47 States and six tribes and territories have received nearly \$5 billion in SRF funding in the first year. That is a big number, and I want to talk for a minute about what that means for people and for local communities.

For example, because of these investments, Sierra Vista RV Park in Arizona will be able to remove arsenic and nitrates from their drinking water. Local government leaders in Sussex County, Delaware, will be able to connect hundreds of homes to a regional water system, which will also protect nearby marshes along the Delaware Bay. And in Pittsburgh, we are going to remove nearly 1,000 lead pipes in low-income and working class neighborhoods.

Those are just a couple of examples of the thousands of projects that are going to be funded by the SRFs. That is the real deal that we are delivering to America because of the Bipartisan Infrastructure Law.

Let me touch on a couple of other highlights. The Bipartisan

Infrastructure Law also established the Emerging Contaminants and Smaller Disadvantaged Communities Grant Program. Just a few weeks ago, we announced the first \$2 billion funding available through that on a non-competitive basis available to all the States that want those resources. Very excited about that.

The Bipartisan Infrastructure Law is also investing nearly \$2 billion through the agency's Geographic National Estuary and Gulf Hypoxia programs. These investments are so wonderful. They are supporting conservation, restoration, infrastructure programs to protect some of our Nation's most treasured waters, the Chesapeake Bay, the Great Lakes, the Mississippi River Basin, the Gulf of Mexico, the San Francisco Bay, really just quite remarkable.

We are also working, because of the Bipartisan Infrastructure Law, to ensure that our groundwater is safe. We are providing \$50 million to help States develop and implement underground injection control classes program to support carbon capture and sequestration. We have a letter of inquiry on that process underway, where States can seek these resources if they want primacy of the program. We are going to be awarding funds to States by the end of this year.

I want to conclude my remarks by emphasizing something that both you, Senator Capito, and Senator Carper said, and that is that we are really dedicated to ensuring that all communities benefit from this investment. We know there are too many small communities, too many rural communities, too many underserved urban distressed areas that have not received their fair share of Federal funding. We can and we must do better. That is our focus at EPA.



In addition to all of the work to get these resources out to States and local communities, we have been standing up the most significant technical assistance program, because we think that is what will change the odds for communities who haven't been able to get their fair share. We are actively working in communities across the Country from McDowell County, West Virginia, Lowndes County, Alabama, to communities all across the Country. We have 29 environmental finance centers who are providing free technical assistance to communities that want it. We have our Closing the Wastewater Access Gap initiative, we have our Lead Service Line Accelerators.

All of these technical assistance programs are helping build that local community capacity to make sure we are unlocking these resources for every community, so that every community has clean and safe water.

Let me end where I began, which is to say thank you. Thank you so much for the opportunity to steward these resources. It is because of Congress and President Biden that you have created a transformational moment right now, a transformational opportunity for the water sector. I want you to know that EPA is working hard, we are working strategically to deliver on the vision that you set in the Bipartisan Infrastructure Law. We are working to make sure that water funding benefits all Americans, no matter where they live, how much money they have in their bank account, or the color of their skin.

I want to thank you again for the opportunity to serve the American people in this way. I look forward to today's discussion. Thank you.

[The prepared statement of Ms. Fox follows:]

Senator Carper. Thank you very much for being here today, and for your leadership, and the hard work that has been done and is being done within EPA especially on these issues.

Again, we want to say to our staffs who are sitting behind us and those who are back in their offices how much we appreciate their work on these issues as well.

Senator Capito, my Ranking Member here, I want to say again how proud I was of our committee last week with our hearing on the derailment in East Palestine. I thought it was a wonderful hearing, and bipartisan and penetrating and something that sets the stage for making sure that the people of East Palestine and that part of America are treated the way we would want to be treated. I am very, very proud, and thank you for all of that.

Let me start with some questions, if I can, for Ms. Fox. We have mentioned PFAS a time or two in today's hearing. I want to return to it. EPA yesterday released, as we know, the proposed drinking water standard for six types of PFAS chemicals. I want to commend you and Administrator Regan for your leadership in proposing a standard that is based in science and a standard that protects the public to the maximum extent possible.

These forever chemicals are prolific throughout the environment. Under President Biden's leadership, EPA has taken another significant step to address their presence in our water with yesterday's decision. Ms. Fox, can you please give us some more background on the standard and explain the next step for the agency's action in this regard?

Ms. Fox. Thank you for the question, Senator. I want to thank

you and Senator Capito and other members of this committee who have kept us focused on getting this drinking water standard proposed. I was talking to Senator Capito yesterday, and said, in the two years that we have had conversations, I don't think there is a single time that we spoke where you don't ask about this. We are really, truly thrilled to be at this key milestone.

The science on PFAS is clear. Exposure, even at very low levels, is very harmful to human health. What we also know about the science is that people are exposed to PFAS from a variety of means, from their air, their land, and their water. But when PFAS is in drinking water, we know it is one of the most significant contributors to the harmful health effects that people face. As we think about making progress on this critical issue for the American people, having a national drinking water standard that keeps PFAS out of our drinking water, that is one of the best things that we can do as a nation from a human health perspective.

We are very proud of the proposal that we announced yesterday. It is based in the latest peer-reviewed science, and science is evolving rapidly as it relates to PFAS. It is grounded in the latest peer-reviewed science. It also learned from the dozen States that already have established MCLs for PFAS in drinking water.

As you said, Senator, the proposal calls for regulating six PFAS. We are proposing to set an MCL maximum contaminant level of four parts per trillion for PFOA and PFOS. Four parts per trillion is the level at which we can detect PFAS in our drinking water. We have laboratory capacity to do that.

We also are proposing to regulate four additional PFAS as a mixture. These four PFAS are known to co-occur in drinking water. This is GENX, PFES, PFNX, PFC, an alphabet soup of PFAS. But with those four, we are setting a hazard index for those four PFAS.

Also, some of the other features of the rule proposal that we are very pleased with is the public notification requirements, which is so important, so that the American people can know. We have developed a flexible approach to monitoring and compliance, recognizing that water systems are in different places.

The next steps are in a 60-day comment period. So we are very much looking forward to engaging with our State co-regulators, local water systems, community organizations, to get feedback on this proposal. We are really working hard to get to a final rule by the end of 2023 or very early in 2024.

Again, I thank this committee for your wonderful leadership on PFAS.

Senator Carper. You are welcome. It is a shared responsibility.

As you know, we all are on multiple committees. One of my committees is having what we call a business session right now. They need me there for a quorum. I have asked Senator Capito if she would preside in my absence, and she has graciously agreed to do so.

Keep an eye on Senator Cramer in my absence. I know that is a big job. Thanks for your responses to my question, and Senator Capito, I will be back as fast as I can. Thanks so much.

Senator Capito. [Presiding.] Thank you.

Assistant Administrator Fox, you and I talked about this

yesterday on the phone. This is a bit in the weeds. You came out several months ago, or maybe a year ago, with what was called a health advisory level for the PFOAS which were so low that, unmeasurable, systems were unable to measure as to what the EPA was saying would be a health advisory level.

You come back now with the MCL, which I am really pleased that we are here today to talk about that, at 4. It is significantly higher than what you previously said the health advisory level would be.

I asked this question, how did you base, what science was the basis for these health advisory levels. Yesterday I got, or the day before, an 1,800-page response from you and the EPA, which was difficult to go through because it had a lot of attached reports and everything with it.

What I am worried about is the risk communication. What does this mean to somebody who is actually trying to determine if their system is safe, and how it is going to impact the health and the drinking water standards? I am going to submit questions to you in writing, because this is going to get a little bit technical, and I don't want to take up all my time on technicalities. So if you could respond to those when I send them, I would very much appreciate that.

Ms. Fox. Yes, I would be happy to.

Senator Capito. Great, thank you.

Let me ask again on the PFOA and PFAS issue, we have set the drinking level, we are going to probably have requirements for systems to test to this level and compliance. There is going to be a lot of instances of what we would call passive receivers, somebody who,

basically a water system who receives the water from a source and passes the water on, and maybe the level is a little bit higher. I am worried about the liability issues. I know you are not in charge of CERCLA, but have you all thought about this and what kinds of issues we might be addressing here at the Congress in terms of the passive liability issue for PFAS?

Ms. Fox. You are correct, thank you for that question. On the CERCLA hazard designation, that is of course in our Office of Land and Emergency Management. But one thing that is particularly exciting about how we are approaching the issue of PFAS at the agency is we really are taking a whole of agency approach. The Office of Water Team has engaged closely with the Office of Land and Emergency Management on these issues of passive liability. Certainly, drinking water systems, wastewater systems, PFAS has entered these systems, and they are not the responsible party.

So as that CERCLA hazardous designation rule continues to move forward, the agency is thinking about enforcement discretion and what is appropriate, just as we do with other CERCLA designations.

Right now, though, is such an exciting moment to be moving this drinking water rule forward, because we also have the resources in the Bipartisan Infrastructure Law, we are working very actively with States and local communities to make sure the \$9 billion that you all dedicated to addressing PFAS and emerging contaminants is out there, that water systems are accessing those funds, getting these treatment technologies in place. I think that is going to make a huge difference as we move forward.

Senator Capito. What would you say to every State in terms of the retention of the flexibilities that are built into the systems on the revolving funds? Once those revolving funds leave DC and go to our States like West Virginia, is all the responsibility in the State then? That is what I would prefer. How do you see that?

Ms. Fox. I really see it as a partnership. We have been very clear in our implementation memo around the Bipartisan Infrastructure Law that we value the flexibility that States have always had with the SRS. Senator Capito, if you look at the thousands of projects that are on these intended use plans, they are so diverse. They are funding drinking water, wastewater, stormwater, small projects, big projects, cybersecurity.

The States are very much in the driver's seat of selecting the projects that really meet the needs of their residents. I think we have preserved that.

It is also a partnership. It is our obligation for oversight and to make sure that States are using various resources in a way that is consistent with the legislation and the statute. An example of that is around disadvantaged communities.

One of the things that we talked about in the SRF implementation memo is, we summarize that of course, States are the ones that determine definition of disadvantaged communities, both on the Clean Water SRF side as well as the Drinking Water SRF side. To be helpful, in that implementation memo we laid out criteria that tend to be good criteria that States are utilizing in those definitions, then ones that may be more problematic. What is so exciting is that a number of

States sort of chose to amend their definition of disadvantaged communities. So we are seeing this trend line of those definitions really being consistent with the statute, the Safe Drinking Water Act and Clean Water Act.

Ultimately, it is a partnership, but yes, absolutely, the States are in the driver's seat in selecting the projects that best meet the needs in their borders.

Senator Capito. I appreciate that answer. I think part of your answer went to what my opening statement was saying, that the States need to be in the driver's seat, the States are going to be able to make the best determinations. I think what we have seen, not just at EPA but also over at Transportation is the Administration is putting the foot on the pedal here in certain instances, and suggesting certain parameters that then lead to our States wondering if we don't go the way that EPA is saying, then are we going to have some kind of, I don't want to say penalty, but are we being guided by other issues that really, if we were doing it on our own, we wouldn't be doing it quite this way. I think that is a cautionary tale.

Senator Cramer.

Senator Cramer. Thank you, Senator, and thank you, Administrator Fox, for being here.

I have a lot of things to thank you for, so bear with me as I do a little bit of that. First of all, I don't think it can be overstated how important your trip to North Dakota was in 2021. While we had a robust discussion about the WOTUS rule, and I will want to ask you some things about that here in a little bit, probably the most



fun was nerding out a little bit with the locals and the State water people, going through a water plant. It was wonderful.

Most importantly, you listened to people and related to them. I thank you for that trip. It meant a lot, both the nerding out and the WOTUS stuff.

I also want to thank you, since then you have remained connected. You have always been available when I have had a question. I have tried to answer the calls when you make them, and every now and then we just bump into each other. I think it is important that people see that relationships matter, even where there is disagreement. I appreciate that.

You and your team clarified some things for my constituents in pretty short order, for a massive bureaucracy like yours. I want to thank you for that as well. As you know, working with the SRF, the State Revolving Fund provisions of the Infrastructure Bill, our State agency that oversees SRF, along with a variety of other stakeholders, of course, in the water sector, raised concerns over the effective date of the Build America provisions.

In particular, there were different effective dates for WIFIA and SRF. Of course, these obviously are different programs; same agency, but different programs, but similar goals. That kind of confusion oftentimes relates to gas, and sometimes people just throw up their hands and give up.

But after a couple of inquiries with State officials, your team reconciled the effective dates. Imagine that. A good, simple solution to the issue. It is going to allow projects in North Dakota,

and I presume other places, but in North Dakota it has moved forward. I want to thank you and your team for clearing that up. It is good public service.

I do want to ask, and I know this isn't about Waters of the U.S. necessarily, but we don't get the opportunity often enough. I know that Administrator Regan will be in front of us for the really tough questions. We will both spare you those.

I wanted to bring up a couple of issues, because at that same meeting in 2021, we heard from stakeholders. Since the agency unveiled the rule, I have heard from a lot of those stakeholders, constituents and others who are concerned that the new rule really embodies some of the same government overreach of the 2015 rule. I know there are some distinctions, and you certainly are going to clarify some of them, I am sure.

Anything that defers to the bureaucracy, we just get concerned about, because we have never really met a regulatory agency that didn't regulate when given the opportunity.

But also concerning was the rule's shift in applying the burden of proof. This is a very specific issue, the burden of proof on the landowners for proving that their land is non-jurisdictional, so on these jurisdictional questions. Can you explain why it does that? The previous rule, the Trump rule in its preamble states emphatically that the burden of proof is not on the landowner but rather on the agency. Your rule seems to have flipped that.

Can you explain that to me a little bit?

Ms. Fox. Yes, I am happy to. I just want to thank you for your

hospitality. It was a wonderful visit to North Dakota. I appreciate the feedback about the team's work with your State SRF program. I have to say, Senator, North Dakota is doing a fabulous job with implementation of the Bipartisan Infrastructure Law resources. They have already taken all of their CAP grants for year one. They are moving fast on their intended use plans.

So it has been a great partnership. There are going to be some great, great projects that are funded in North Dakota. I can't wait to come back out for some of those groundbreaking as well.

On Waters of the United States, thank you for the opportunity to clarify this question that you raised. And thank you for hosting me in North Dakota. We just received so much valuable information from the wide array of stakeholders you brought together on Waters of the United States.

I am really proud of where we landed on this rule. I think both in my confirmation hearing, and Administrator Regan, when he had his confirmation hearing, we both talked about how our priority was to stop the ping-pong with Waters of the United States, and to put forward a balanced rule that provided clear rules of the road to farmers, to ranchers, to landowners, to developers. And we have done that.

Our rule is not the Obama Clean Water Rule. It is a much more narrow definition of Waters of the United States than the Obama Rule. It is not the Trump Navigable Waters Rule either, which as you know was vacated by multiple courts and it was off the books as of August 2021.

One of the things we really focused on in the development of our rule was practical implementation considerations. That is what I heard when I was in North Dakota. On this landowner question, a couple of things that I would share. One is that as part of our 2023 rule, we have a whole landowners guide that makes it very easy for landowners to understand what is, if a permit might be needed or not.

We also have worked closely with Army Corps where they can provide free jurisdictional determinations to any landowner that asks for them and to do that quickly. So that is a key feature.

One of the things I am most proud about as far as our 2020 rule is we also clarified what is out. So in the rule, we codified eight exclusions that we heard in places like North Dakota are very important, for example, with prior converted cropland. This is something that so many farmers and ranchers have said, it is confusing.

So in the rule, we have made that a categorical exemption, very clear. We partnered very closely with USDA on that because we thought it was also really important that our definitions between the different agencies are aligned. That is why USDA is so supportive of this particular rule.

Finally, again, the focus on implementation versus fighting about the definition at the Federal level is really a priority moving forward. One thing that we did is, as we issued our final rule, we also issued a series of implementation memoranda. Some of them are between EPA and Army, where we are doing trainings to make sure that there is a consistent understanding of this definition.

We also have a coordination, an MOU with USDA, again on how do we make sure some of these programs are aligned for the agriculture community.

Senator, I believe we have delivered on what we said we would do. No more ping-pong; let's find the center, let's give people clear rules of the road as it relates to Waters of the United States. Then also to make sure we are protecting those vital water resources. I hope you see that we have struck that balance. We certainly have tried.

Senator Cramer. I appreciate that. I am sure I am the last Republican who will ask you about waters today.

[Laughter.]

Senator Cramer. Thank you.

Senator Capito. Thank you. Senator Cardin?

Senator Cardin. Thank you, Madam Chair. I appreciate it very much. Let me thank the Administrator. Thank you for your leadership on these issues. I appreciate the engagement you have had with our office. These are exciting times. We have opportunities that we have not seen in generations to deal with our water infrastructure.

We all know the current status of our water infrastructure, whether it is drinking water or wastewater, it is not where it needs to be. We consistently get grades that are unacceptable. I use Baltimore City as an example. Baltimore City had the best drinking water system in the world 100 years ago. Unfortunately, some of those pipes are still underground today and are being used.

So we have challenges in Baltimore, we have challenges throughout

our Country. One of the major parts of the Bipartisan Infrastructure Law and increasing the resources going into the State Revolving Funds was to direct your efforts to traditionally underserved communities, communities that have an affordability issue with regard to doing the necessary infrastructure that is critical to drinking water and wastewater treatment.

Tell me how you are going about reaching those communities that have had challenges in the past being able to afford the necessary improvements to their water systems, carrying out the intent of Congress.

Ms. Fox. Thank you for that question. We are doing a couple of things. One is, one of the most exciting features of the Bipartisan Infrastructure Law is that you all provided about 49 percent of resources must be spent for, be put out as grants and principal forgiveness in disadvantaged communities. I think your vision in designing the Bipartisan Infrastructure Law has unlocked so much potential.

The challenge, Senator, is that disadvantaged communities often don't have the financial capacity to access the loan aspect of the SRFs. So by putting so much money as grants and principal forgiveness, you have removed one of the critical barriers that these communities face.

But we know that just having the resources available isn't enough. That is why we have stood up the ambitious technical assistance program alongside the capital projects that we are funding. We have built out our environmental finance centers, we have 29 of

them. Every region, EPA region, has an environmental finance center as well as national ones. They are basically available to any community that wants technical assistance in order to access the SRF funds.

As we design that technical assistance effort, I thought about when I worked at a local water utility, I was at the San Francisco Public Utilities Commission, and there we had access to all the best engineering, design, financial planning. A disadvantaged community doesn't have access to those things, but they need that in order to get these SRF funds.

So we are basically making that available to any community that wants them. We just opened up our TA web page, so I would love to share that information with the committee so you can share it with your constituents.

We are going to be helping thousands of communities access these SRF dollars. Really, that is the core of the strategy, providing that technical assistance support, so that these disadvantaged communities can build our technical, financial and managerial capacity.

Senator Cardin. I want to follow up with you as to how that is being implemented. We have jurisdictions like Baltimore City where the ratepayer support is inadequate to deal with the needs that we have, because of income. Then we have communities like Smith Island, which are so isolated that they just don't have the population to be able to support the water they need without greater assistance.

So we have different needs in our State. I am sure that is true throughout the Country. Technical assistance would be critically

important. But also making sure the resources get to those communities. Please keep us informed, and I will be working with you on that.

I want to ask you one other question about the low-income water assistance program. We provided \$3 million in the Fiscal Year 2023 Omnibus for you to conduct low-income water assistance needs assessment. Senator Wicker and I have worked on the realities that water bills are beyond the capacity of many ratepayers today. We have a low income utility assistance program under LIHEAP, but we think there is a need for one under water.

How are you implementing that needs assessment?

Ms. Fox. Thank you for that question, and you are absolutely right. This issue of water affordability, even though the \$50 billion in funding from the Federal Government will make a huge difference, water affordability is a growing challenge in communities across the Country. In my former role as CEO for the U.S. Water Alliance, I helped create this water equity and affordability network.

As to the assessment, we are currently, we are going to partner with HHS in the development of that assessment, since they are managing the LIWAP program. We are currently designing the methodology for that assessment, and it is going to get underway very soon. I am happy to keep your office, Senator Cardin, and Senator Wicker's offices up to date on how that assessment is going.

In addition to that, we are working closely to support HHS as they continue to administer the LIWAP program, which we are so grateful was developed by this Congress.



Senator Cardin. Thank you. I would appreciate it if you would keep me informed.

Madam Chair, I have a unanimous consent request on behalf of the Chairman. I ask unanimous consent to enter into the record a letter from the American Sustainable Business Network which represents more than 400 businesses that rely upon clean water. This diverse coalition of businesses includes breweries, mattress companies, and farms. The letter expresses opposition to efforts they used in the Congressional Review Act to overturn the 2023 WOTUS rule.

Senator Capito. Without objection.

[The referenced information follows:]

Senator Cardin. Thank you.

Senator Capito. Senator Lummis.

Senator Lummis. Thank you, Madam Chairman. Welcome,  
Administrator Fox.

I was so pleased to hear Senator Cramer compliment you on the relationship that you formed with problem-solving in North Dakota. I am hoping you can help me similarly with a couple issues I have today that I would like to discuss with you about sanitary survey results.

My office has heard repeatedly from constituents that are frustrated with delays from the EPA on sanitary survey results. I have close to a dozen towns or small water systems that have waited, some as long as 26 months, to get survey results that were conducted in the summer of 2020. These delays make it really difficult for these communities, because some are getting results not long before a new survey is required.

Can you commit to getting the survey results out within better time frames? Ideally it would be 60 days after completion. But these surveys take a long time for these communities to fill out, especially small water systems. Then there is a delay, and they need the feedback sooner, because as soon as they get these results, they are going on into another survey.

Ms. Fox. Thank you so much for making me aware of this issue. Yes, you have my commitment that I will personally look into the 12 water systems that you mentioned that are waiting. The sanitary survey, you are right, Senator, it is a very important tool that States and local water systems and the EPA utilize. Local water

systems need that information in order to make key operational maintenance management decisions.

So yes, I will commit to looking into the situation with these 12, as well as just looking more broadly into the timeline for returning that information.

Senator Lummis. Thanks very much. I really do appreciate that.

I also have another question about the topic of sanitary surveys. Madam Chairman, I would like to enter into the record a letter, asking unanimous consent to enter into the record a letter to Administrator Regan dated January 25th, 2023, concerning the EPA's memorandum to State drinking water administrators on public water systems cybersecurity.

Senator Capito. Without objection.

[The referenced information follows:]

Senator Lummis. Thank you. This letter addresses the EPA's plan to add cybersecurity requirements to the sanitary survey program. Now, we all agree that cybersecurity is incredibly important for water systems. But it is doing it as part of the sanitary survey program that has raised issues.

The organizations that signed the letter I just entered into the record have called that plan ill-advised, impractical, and not designed to meaningfully improve system resiliency. EPA's approach is also legally flawed. That is what the letter says. Then they go on to ask for the EPA to recall the memorandum.

The signatories to that letter include the American Water Works Association, National Association of Clean Water Agencies, National Rural Water Association, U.S. Conference of Mayors, National Association of Counties, and others. Obviously, this has received a lot of review from local governance and they are concerned about just using this survey as the source for gathering that information.

Can you talk about what outreach was done concerning this memorandum?

Ms. Fox. I am happy to do that. Senator, you are absolutely right, cybersecurity threats to water systems is a growing concern that is happening with more frequency. There are bad actors out there, and this is a significant vulnerability to our water systems.

We believe that in order to protect our water systems from cyberthreats, we have to take a multi-faceted approach. That is exactly what we have been doing at EPA. For example, we have been encouraging water systems to consider using SRF funds to do those

cybersecurity upgrades. In the President's budget, he has requested additional resources for a grant program to help water systems get in compliance. We do many, many trainings and resources that are out there all the time.

We feel that this implementation memo that I recently issued is also a critical part of the solution. The sanitary survey is really the primary tool by which a State can really assess the operational capacities of a local water system. Given the critical nature of having good cybersecurity practices, we felt that this needed to be, in this modern age, one of the operational considerations that States look at in these surveys.

We had a very robust process. We actually asked one of the State drinking water administrators, we had a workgroup process with them. They reviewed the memo. We had many, many consultations all along the way. And we are not just issuing a memo without support. There is a whole series of resources that are being developed, key questions that can easily be added by the State to these sanitary surveys. So we think this is very doable, very achievable, a good, key step forward to protect our water systems from cyberthreats, which again are growing.

Senator Lummis. I would encourage you, because of the letter that was addressed to Director Regan, to have more conversations with the local implementers. Because it is a pretty broad association of locals that are saying, the sanitary survey program is just the wrong tool to have this dialogue.

Clearly, there is some sort of disconnect going on between the

local implementers and EPA on this. So I would ask for your careful reconsideration or at least extending your dialogue with those folks.

My time is up, Madam Chairman. I will submit a question about drinking water loss in municipal systems due to faulty and leaky infrastructure, and ask for a response in writing.

Thank you so much for being here.

Ms. Fox. Thank you, Senator.

Senator Carper. [Presiding.] Senator Lummis, thank you for those questions.

Next, we have been joined by Senator Kelly. Good morning, and welcome.

Senator Kelly. Thank you, Mr. Chairman.

Good morning, Administrator Fox. It is nice to see you here today. Thank you for the conversation we had yesterday.

I want to start off by discussing the recently finalized rule by EPA and the Army Corps on the definition of Waters of the United States. As you know, there has been a push by some in Congress to use the Congressional Review Act, a COA to repeal this rule. You and I discussed some of my concerns here, and those of Senator Sinema. The two of us sent a detailed letter to EPA and the Corps last week with some specific implementation questions.

I want to talk for a minute about what would happen if the COA passed. We are going to have a vote on it. So if it passed, I want to start with a few yes/no questions.

So if the 2023 WOTUS rule were repealed, would the Trump-era Navigable Waters Protection rule take effect?

Ms. Fox. No, it would not. Because it was vacated in August 2021, by a Federal court.

Senator Kelly. Would the 2025 Obama-era WOTUS rule take effect?

Ms. Fox. No, it would not.

Senator Kelly. So my understanding is the rule that would be in effect would be something similar to the pre-2015 WOTUS guidance, is that correct?

Ms. Fox. That is correct, Senator.

Senator Kelly. That guidance, my understanding is that it relies on the same types of significant nexus test as the WOTUS rule that EPA and the Army Corps finalized this January, is that right?

Ms. Fox. Yes, but there are key differences in how we approach it.

Senator Kelly. Can you explain those differences?

Ms. Fox. Yes, sir. The CRA, if it were to pass, it would as you said put us back to the pre-2015 definition of Waters of the United States. That definition is broader than our 2023 rule; our 2023 rule is more narrow in the definition of Waters of the United States. It is more uncertain. So there would be key challenges.

With a CRA, you can't sort of take parts of the rule that work and parts that don't that people might have concerns about. It wipes out the entire rule and puts back in place the 2015.

So we would, for example, on the question of the two-test significant nexus, and relatively permanent, in our 2023 rule, significant nexus is much more narrowly defined than in 2015. It would be utilized only in a very small number of waters, whereas it

would be much more broad in the 2015 versus the 2023.

Another challenge if the CRA would pass is that many of the exemptions and exclusions that I was talking to Senator Cramer about just a moment ago, those would all be voided out. Because the CRA says that agencies cannot ever adopt a rule that is similar in the future, we may never be able to bring back things like prior converted crop or exemptions for artificial ponds, things like that. So it would really create confusion, uncertainty, and void the very commonsense aspects of the rule that we worked so hard to put in place.

Senator Kelly. So the things we did in the 2023 rule, that actually made it narrower?

Ms. Fox. Yes.

Senator Kelly. If we go back to the 2015, we do it through the CRA process, in the future we couldn't use those same items as you just addressed to get a narrower definition of Waters of the United States?

Ms. Fox. That is correct. Agencies are prevented from issuing anything that is similar.

Senator Kelly. So this took us a while to sort through. It is not an obvious thing, you know sometimes how you can, through a CRA process, you are trying to get an outcome that might be narrower, and in fact you have some unintended consequences. I think that is the case here. Is that your sense?

Ms. Fox. That is absolutely the case. We would be throwing out a narrower definition of Waters of the United States. We would be



throwing out all of the implementation direction that we provided. We would be throwing out the collaboration memos between USDA and EPA and Army Corps that will help with good implementation. We would be going back to a broader definition of significant nexus.

It would create a great deal of uncertainty in communities across the Country. We believe it would lead to delays in permitting important projects, permitting infrastructure projects, developing happening on land. So it is not the right tool.

We can always improve on Waters of the United States. We welcome that conversation with this committee. We are also laser-sharp focused on doing implementation work in a way that addresses the regional differences across the Country. We would lose all of that if this rule gets CRAd.

Senator Kelly. Thank you, Administrator Fox. Thank you, Mr. Chairman.

Senator Carper. Thank you, Senator Kelly, for that line of questioning. Some important points were made there. Ms. Fox, thank you for your responses to them.

I mentioned this earlier; one of the things that this committee looks forward to is certainty and predictability. That has always been the case, and I think it is the case still.

Senator Ricketts, you have been patient. Thanks a lot for joining us. We have been joined by Senator Sullivan as well. Thank you, and you are recognized for your questions.

Senator Ricketts. Thank you very much, Chairman Carper, Ranking Member Capito, thank you very much, and Administrator Fox, thanks very

much for joining us.

Having been governor, one of the things I am very well aware of is water infrastructure and how challenging it can be, as Senator Cardin said, not just big cities but also especially in Nebraska, small, rural communities. Obviously, the EPA has, on Tuesday, released its first national standard for six PFAS levels for drinking water. Small water systems, again, often don't have the technical capability for dealing with these and implementing these sorts of monitoring requirements.

How do you plan to assist small water systems, especially in small, rural areas, for doing the testing and compliance for being able to comply with this rulemaking?

Ms. Fox. Thank you for that question. This is a huge priority for us in the Office of Water, how do we broadly make sure that smaller water systems, rural systems benefit broadly from the Bipartisan Infrastructure Law and everything that we are doing on this question of PFAS specifically.

There are a couple of things. One is that we have recently started our UCMR 5, which is an ongoing monitoring program. Historically, larger water systems do that. It is harder for smaller systems. We advocated for resources so that smaller systems could do that. Because of the generosity of Congress, we have resources now to work with smaller systems on that.

In the Bipartisan Infrastructure Law, there is a new \$5 billion grant program that is dedicated to small systems and disadvantaged communities to basically look at issues of PFAS and other emerging

contaminants. So that is going to be resources that are dedicated to the very communities that you are asking about, Senator. Those resources can help other grant programs, so you don't have to pay anything back. They can use that for testing, for remediation, implementing treatment technologies. So that is going to make a huge difference.

What we have learned in our work across rural America is that just getting resources, making resources available isn't enough. You have to support smaller systems, rural systems, in building their technical, financial and managerial capacity to be able to both get that grant or get that loan, and then be able to implement it well.

That is why we are spending so much time building out the technical assistance infrastructure. We have 29 environmental finance centers. We have actually increased our contracts with National Rural Water and with RCAP, the Rural Community Assistance Program, because they have direct touch points in rural America. So they are going to be doing even more technical assistance in these areas.

So that is some of what we have underway. We think it is really going to change the odds in rural America.

Senator Ricketts. So how would a smaller community be able to access some of those resources you are talking about?

Ms. Fox. We have just put up a technical assistance web page on our website. I would be happy to share that information with your office.

Senator Ricketts. Please do.

Ms. Fox. Then also, we are working very closely with the States.

Many States also have technical assistance programs. So we are trying to coordinate. Your environmental secretary, your SRF State manager, they are going to know the communities that are out of compliance, they are going to know the communities that are keeping them up at night as it relates to clean, safe water.

So we are asking them. We are building this list of communities. And we are not waiting for people, for a community to come to us. When we hear from a State or a local water system that something is of concern, we are having our technical assistance providers actively reach out to them. So we have to go to the community, not just wait for them to ask for help.

Senator Ricketts. Great, thank you. I am running out of time here, so I am just going to talk about another thing we were talking about with some of the investments for these communities. The intent of these funds was to help communities that need the most to be able to get the resources. My understanding, though, is that some communities feel like there have been other priorities put in there with regard to climate rather than safe drinking water.

Is that something you feel is being pushed in the legislation? That was not Congress' intent. Or do you feel people are just taking this the wrong way. What is your response when you hear some of those criticisms?

Ms. Fox. I do think it is a misunderstanding, Senator. We have been very clear in our implementation memo and all of our discussions that the States are in the driver's seat in making decisions around the SRF program. They know what communities need those resources the

most.

So we have been clear on that. We certainly encourage climate considerations. But it is not a requirement. Certainly in places like Oklahoma, drought is a top concern. So, certainly projects that are going to help water supply diversification and conservation around water re-use and recharge, these are things that are going to really matter in communities.

But no, the States are in the driver's seat as far as selecting projects.

Senator Ricketts. Great. Thank you very much.

Ms. Fox. Thank you.

Senator Carper. Senator Ricketts, thanks for joining us.

Senator Sullivan, good morning. Welcome.

Senator Sullivan. Ms. Fox, I want to start with a chart here that I have trotted out a lot in this committee room. This is a chart of life expectancy in America and in Alaska in particular for the last 25 years, from 1980 to 2014. Do you see where the blue and dark blue is? That is life expectancy going up a lot. Actually yellow, orange, red, actually life expectancy has decreased, that is really sad in America. Mostly that has been due to the opioid epidemic that has killed so many Americans.

But my State, particularly in the rural regions, the North Slope, interior, Aleutian Island chain, has had the largest life expectancy increase of any place in the Country in the last 25 years, of up to 13 years in many of our rural areas. So that is a great indicator of policy success.

Why do you think that happened? That is a hard question. But 1980 to 2014, what else happened in Alaska during that time? I will just answer. It is not an easy question.

So we had a very big boom in resource development, oil and gas, mining. So when I get upset about these issues, when Federal agencies try to shut down resource development in my State, it is literally a matter of life and death. The communities in rural Alaska that have benefitted from that, they are living longer. And I don't know if there is any policy indicator of success more important than are the people you representing living longer.

Would you agree with me?

Ms. Fox. Yes.

Senator Sullivan. Anything more important than that?

Ms. Fox. No.

Senator Sullivan. No, I don't think so, either.

So one of the things that is frustrating, we just went through this Willow process, the vast, vast majority of the Alaska Native people were supportive. The national media hated to write that story. They kept canceling the voices of the indigenous people of Alaska. But we finally got it out there.

And one of the big reasons is because of this. They know it is jobs, pride, things that most communities take for granted like running water, flush toilets. You get infrastructure, you get jobs, you get revenues, you can do those things that, in parts of my State, people haven't had access to for a long time, maybe ever.

So let me talk about a related area. But it is all in this area,

too, it is mining. Unfortunately, the Administration on a number of mining projects, the Ambler mining district in particular, we did a seven-year EIS, \$10 million. The same day the President held a critical mineral summit at the White House on the importance of cutting our dependence on foreign critical minerals like from China. They reversed that EIS in Alaska.

Now, that was the Department of Interior, Secretary Haaland seems hell-bent on reversing everything, despite that chart. Kind of remarkable that she would be doing that. But the EPA recently finalized this 404(c) action on Pebble, the preemptive veto action, but you said "It is also important to note that the EPA's action does not apply to current or future resource development projects in Alaska." Similarly, Administrator Regan said, "By no means is this decision meant to send any signals beyond this specific project."

Can you begin by recommitting to me that EPA won't use 404(c) as a precedent to stop future Alaska projects, or importantly, anything that has already previously been permitted in Alaska? Keeping this in mind. Because when you do that, when Deb Haaland recently reversed the Ambler decision, she actually yesterday reversed the King Cove Road decision, there is no Native project that people in Alaska care about that she doesn't reverse, the Native people, by the way, again, stunning to me. But can you recommit to what you and the Administrator already said with regard to mining projects in my State?

Ms. Fox. Yes, and Senator Sullivan, it is good to see you again. I was just thinking, seeing your map, the last time we were together was at the Bethel Airport, this past summer when we were both visiting

an Alaska Native village that was working on a water infrastructure project. So it is good to see you again.

And yes, to be clear, EPA has sparingly used our 404(c) authority, only three times in the last 30 years, three times. That is it. And yes, I commit, as does Administrator Regan, that it will be sparingly used. We were very clear that that 404(c) action was about a particular mine and a particular geography, the geography of Bristol Bay, a beautiful and unique ecosystem.

Senator Sullivan. Okay, thank you, I don't want to interrupt. I said one final question. I spoke at the annual conference of the Tanana Chiefs Conference yesterday in interior Alaska. I talked about water and sewer and the needs to get some of the communities, we have 30 communities in Alaska that don't have flush toilets and running water.

By the way, these are some of the most patriotic communities in America, because Alaska Natives serve at higher rates in the military than any other ethnic group in the Country.

So can you recommit to me, given the resources in the Infrastructure Bill, I told them that you are going to be working with us on getting rid of what we call honey buckets, which is a euphemism for people having to go to the bathroom and then take their own waste out and throw it in a lagoon. Pretty disgusting. American citizens still do that in my State.

Can you recommit to me to help us get rid of the honey bucket once and for all?

Ms. Fox. Absolutely. Seeing first-hand people living with honey



buckets with washeterias when I visited Alaska last August, I am absolutely committed to this. I think we have the ability to make tremendous progress because of the Bipartisan Infrastructure Law and the incredible leadership that President Biden and this Congress have made in investing \$50 billion. So you have my absolute commitment on that.

Senator Sullivan. Great. Thank you. Thank you, Mr. Chairman.

Senator Carper. Thank you, Senator.

In the Bipartisan Infrastructure Law, Ms. Fox, Congress committed to ensuring that disadvantaged communities benefit from Federal drinking water and wastewater infrastructure investments. The Biden Administration has made the same pledge through its Justice 40 initiative.

State polices such as project ranking systems that have additional eligibility criteria can create barriers to disadvantaged and underserved communities' ability to access funds. Here is my question: Is EPA tracking these State-level barriers and what is the agency's plan to help communities overcome these barriers so that they can access Federal investment in water infrastructure?

Ms. Fox. Thank you for that question. Yes, Senator, we are tracking those barriers and working actively with individual States as well as with CIFA, the Council of Infrastructure Financing Authorities, to collaboratively develop solutions to those barriers.

The States and EPA, we share a commitment to making sure that we make these resources available to as many communities as possible. And things like a project ranking system, it is a barrier in some

States. There are other barriers that exist as well. Some States, for example, have only an annual application process, while other States allow for multiple rounds of submission of SRFs. That is another thing.

I think there are challenges around local communities knowing when to apply and having full transparency into that process. So there are a range of barriers, as there are with many funding and financing programs across the Federal Government. So we are very closely partnering with the States to work through those together.

One thing I can also say is there is an incredible amount of peer exchange and learning that is happening right now across States. There are trainings and opportunities for the States to come together to learn from one another. We want to support and encourage that as much as possible, as well.

Senator Carper. Thank you. One of the Biden Administration's priorities has been to replace lead service lines. The Bipartisan Infrastructure Law included \$15 billion in funding for full lead service line replacements, a lot of money. In the years leading up to the passage of that law, we heard from several States, including my own States of Delaware, that the prevalence of lead service lines was not a significant problem. However, as some of those States started doing lead inventories, it became clear that the presence of lead pipes and the health impacts they cause is more pervasive than a lot of folks expected.

Given this initial skepticism, have the States been able to use funding for lead service line replacements?

Ms. Fox. One of the most exciting aspects of this job and serving in this capacity is to help deliver on President Biden's commitment to get the lead out once and for all. It is just so remarkable, the President's leadership on this issue. At the EPA, we are using every tool in our tool box to deliver on that.

As it relates to your question, Senator, the reaction is mixed. There are some States that feel that their allocation of lead service line money is insufficient for the need. Others think that the allocation is too much, given how much the need is there. So we are in constant conversation with the States to understand that.

We do have what is called a reallocation process that we can utilize, so that after two years, if a State doesn't use their lead service line money, we can reallocate it to a State that could use it. So right now, we are in the process of working with the States to make sure they know they can use this money to support inventory development. Because that is the first thing to really understand the nature and scope of the problem to start those replacement projects. But then yes, after those two years of States utilizing those resources, we will be able to reallocate.

Senator Carper. Thank you. My last question today deals with private wells. My family grew up in West Virginia and largely in Virginia. We always had private wells, and I think a lot of folks around the Country still do, and a lot of folks have private wells drilled for them, their families and farms in some cases.

The presence of contaminated private well water is becoming a problem nationwide, as you know. In Delaware, we know that are about

173,000 residents depend upon private wells. Most people don't think we have that many people in Delaware, but we do. We have a million people now. There are about 173,000 residents who depend on private wells for their drinking water. This number is actually growing, not shrinking.

Congress included language in the Drinking Water and Wastewater Infrastructure Act to allow to give grants to States to address underground sources of contamination impacting wells. Unfortunately, EPA has determined it cannot implement the language except to connect homeowners to a regulated water utility, which as you know is not always feasible.

Because waters are managed by the States, Congress does not expect EPA to take on the regulation of wells under the Safe Drinking Water Act. Having said that, Congress did expect EPA to help States address these sources of contaminated drinking water.

I am going to ask if you would be willing to commit today to working with this Committee on the Environment and Public Works to help address well contamination by providing resources to States.

Ms. Fox. I absolutely commit to that. This is a shared concern around protecting public health and I am happy to work closely with this committee on this issue moving forward.

Senator Carper. All right. Is there any question you wish you had been asked that you have not been asked? This is a freebie.

Ms. Fox. My favorite question to ask people is, what is your favorite body of water.

Senator Carper. All right, now that I am the only one here, what

would that be?

Ms. Fox. The Pacific Ocean.

Senator Carper. That is great. It is hard to argue with that one.

That is it for my questions for you today. I want to thank you again for being here and for your responses, and for the work that has gone on. Convey to your team our thanks, especially for the work on chemicals. That is one that is of great importance to the Ranking Member and me and I think to all of us.

I tell this story, and I will close in a moment and move to the next panel. I spent a lot of my life in Navy airplanes. I literally witnessed a terrible tragedy at Moffett Field Naval Air Station when I was on active duty, two parallel runways. We shared the base with lots of NASA airplanes. Our P3s were smaller, four-engine airplanes, not as big as the ones NASA flew in.

Early one morning, two planes were coming down to land simultaneously on the two parallel runways, a Navy P3 on the right and a larger NASA aircraft on the left. Both planes were cleared to land, as it turned out, on the same runway. And the larger NASA plane crushed the P3 and killed about 18 people. Firefighters rushed out to try to save lives, 18 people died.

About 28 years later, I was living in Delaware heading down Route 13, heading to Route 1, approaching Dover Air Force Base, which is on the left as you head south on Route 1. I could see black smoke coming up from the Air Force Base. A C5 cargo plane, which was fully loaded with gas and fuel and cargo, tried to take off from Dover Air

Force Base, climbed up to an altitude, four engines on the C5, and they got an engine warning on one of the four engines. The flight engineer shut down the wrong engine. So instead of having four engines working, they had two. They had a full bag of fuel and fully loaded. And they tried to come around and land on the runway, they lost their altitude, they didn't make it. They went in about a mile south of the approach end of the runway.

Firefighters came out from all over the Dover Air Force Base, covered the plane with foam and saved every life. Saved every life. That is the good news. The bad news is in the wake of that, we have four communities around Dover Air Force Base who have contaminated drinking water.

So it is something that was really intended to save lives, it turns out it inhibits the quality of life. We are still dealing with that in Delaware. We are dealing with it in West Virginia. I am very pleased with the attention that the issue has received and hopefully will continue to receive.

Again, thank you very much. Senator Capito, anything else you want to say?

Senator Capito. Thank you.

Senator Carper. All right, thank you so much.

With that, we will welcome our second panel.

Good morning. I think we have an opportunity to welcome you all individually. We are delighted that you are here. Thank you for your testimony, thank you for your service as well.

Randy Hayman is Commissioner and CEO of the Philadelphia Water

Department, a role he was appointed to in 2019 by Mayor Jim Kenney.

We consider you a neighbor right up the road. You tell the Mayor we give him our best and thank you for joining us today.

STATEMENT OF RANDY E. HAYMAN, ESQ., COMMISSIONER AND CEO, PHILADELPHIA  
WATER DEPARTMENT

Mr. Hayman. Thank you, Chairman Carper, and Ranking Member Capito, and members of the committee. Thank you for the opportunity to testify on the critical new resources and assistance being delivered by the Infrastructure Investment and Jobs Act and the Drinking Water and Wastewater Infrastructure Act, commonly known as the Bipartisan Infrastructure Law, or BIL.

As the Commissioner and CEO of the Philadelphia Water Department and a member of the Board of Directors of the Association of Metropolitan Water Agencies, I know that the Nation is long overdue for landmark investment in water infrastructure. So I want to begin my testimony by commending this committee for its leadership in developing the Drinking Water and Wastewater components of the BIL, and the cooperative, open door engagement with AMWA and other water sector stakeholders that was the hallmark of this process.

This bill was the model of how both parties and sector stakeholders can work together to find common ground. This is why the initial DWWIA, the Drinking Water and Wastewater Infrastructure Act, which passed the Senate with a vote of 89 to 2 before being incorporated into the larger bill.

But this is all about how we got here. Today I want to focus my comments on the on-to-ground benefits that resources provided by the Infrastructure Law are providing to my community. For background, in 2019, Philadelphia completed its water revitalization plan, a 25-year multibillion dollar strategic vision for upgrading our city drinking



water infrastructure. The plan contains an estimated 400 necessary projects, including building water retreatment plants and replacing pumping stations and transmission mains, while leveraging low-cost financing opportunities to keep rates affordable for our customers.

To be honest, the financing component represents one of the hardest aspects of the plan. We know what to do. We know what work we need to do to strengthen our city's water infrastructure. Our engineers are smart and they are dedicated.

What is not as apparent is how the city can pay for it without raising our water and sewer rates to unsustainable levels. Fortunately, passage of the DWWIA came at an opportune time, because our city was working to implement this plan. Last month, President Biden announced that Philadelphia will receive \$500 million in financing through several different programs authorized and funded by --

Senator Carper. Could you say that again? How much was that?

Mr. Hayman. Five hundred million, a significant amount.

This includes \$160 million through Pennsylvania's share of the Bipartisan Infrastructure Law funds to upgrade treatment facilities and replace more than 19 miles of water mains and any lead service lines discovered during this work.

Additionally, in January, Philadelphia closed on a \$19.8 million loan from EPA's WIFIA program. This will support the replacement of 15 miles of water mains and approximately 160 lead service lines throughout the city at lower financing costs than we otherwise would have faced. This loan represents just the first stage of a \$340

million worth of WIFIA assistance promised to Philadelphia by EPA. These future investments will be paid for by subsequent rounds of WIFIA loans.

So this is why it is so essential that Congress reauthorize WIFIA as part of the DWWIA and set a course for the program stability in years to come. While WIFIA has become consistently funded by Congress, DWWIA extended multiple other water and wastewater infrastructure funding programs, many of which are still awaiting meaningful investments and appropriations by Congress, implementation by EPA.

One such program is EPA's Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Program, which will help drinking water systems prepare to withstand the effects of natural disasters and cybersecurity threats. AMWA championed creation of this program, alongside Senator Ben Cardin, and we are pleased to see it received an initial \$5 million appropriation in the final Fiscal Year 2023 spending legislation.

However, the national need is much greater than \$5 million. The water systems across the Country are still waiting for EPA to stand up the program. AMWA urges EPA to move with diligence to make this program operational and to request full funding in future budget requests.

Finally, let me conclude. There are a few areas that I think the funding and progress provided by DWWIA could be made even more effective. First, we greatly appreciate the law authorized a new low-income water wastewater system pilot program at EPA. Water

affordability is a national need, and it should be part of the Federal safety net. AMWA urges EPA to quickly complete its required National Water Affordability Needs Assessment, so that the pilot program can be funded and put to work.

We would also appreciate more clarity and consistency in relationship to which communities are eligible to receive additional subsidized SRF funding provided by the bill. EPA has specified that this is available to disadvantaged communities.

But due to several factors, Philadelphia Water cannot assess grants of principal forgiveness through the PENNVEST State Revolving Fund, most predominantly due to the affordability methodology used. This means that the loans currently being provided through the Bill funding will have to be repaid through higher water bills in Philadelphia and other communities facing similar hurdles.

AMWA would be interested in working to establish clear and consistent baseline standards to ensure low-income populations can benefit from this aid, no matter what size community they are in.

Again, I thank you for the opportunity to testify before you today. AMWA was honored to work with the committee on development of the infrastructure legislation and the Philadelphia Water department is proud to be among its first recipients.

I have submitted my full statement for the record, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Hayman follows:]

Senator Carper. That is great. We are going to hear from the other witnesses, then we will come back and I will ask some questions. Thank you again for your presence, and thank you for your testimony today.

Thomas Sigmund, the Executive Director of N-E-W, NEW Water, is that an acronym?

Mr. Sigmund. It can be, for several things. Either Northeast Wisconsin or New in that we take wastewater and provide a new product, which are resource recovery and clean water.

Senator Carper. All right, good. Executive Director of Regional Clean Water Utility in Green Bay, Wisconsin. One of the most exciting exhibition football games I ever saw was in Green Bay. You would have thought they were playing for the Super Bowl, it was in August. They were so pumped.

Senator Capito. Is that the one you played in?

Senator Carper. It is the one I should have played in.

[Laughter.]

Senator Carper. I don't think so.

Mr. Sigmund, you are recognized to give your statement. Thanks a lot for joining us and for what you do.

STATEMENT OF THOMAS W. SIGMUND, P.E., PRESIDENT, BOARD OF DIRECTORS,  
NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES, AND EXECUTIVE DIRECTOR,  
NEW WATER, GREEN BAY, WISCONSIN

Mr. Sigmund. Chairman Carper, Ranking Member Capito, and members of the committee, I appreciate the opportunity to appear at today's hearing.

My name is Tom Sigmund. I serve as President of the Board of Directors of the National Association of Clean Water Agencies, and I am also Executive Director at NEW Water, the brand of the Green Bay Metropolitan Sewerage District, in Green Bay, Wisconsin, where I have been since 2007.

NEW Water is a regional clean water utility providing wholesale conveyance and treatment services to 238,000 people across 15 municipalities in northeast Wisconsin. We have 101 employees, an annual budget of \$49 million, and maintain a 20-year capital improvement plan of \$470 million in 2021 dollars. Our utility views the material sent to its facilities as a valuable resource to be recovered and reused, and are committed to continued improvement in the watershed.

For over 50 years, NACWA has represented public wastewater and stormwater agencies nationwide that are on the front lines of public health and environmental protection. Our unique and growing network of 350 public agency members works to ensure public utilities have the tools necessary to provide affordable and sustainable clean water for all.

As part of that mission, NACWA has long advocated for the Federal

Government to recommit to a full and reliable partnership with local communities to invest in and build critical water infrastructure.

In this Country, local customers and ratepayers have paid for the overwhelming majority of investment in water and sewer infrastructure. Not surprisingly, the costs of providing clean and safe water have been growing for years, and by extension, rates have been also increasing to meet this cost. This can be a significant hardship for many in our communities. Those of us responsible for setting or influencing rates take this very seriously.

The historic water infrastructure investments in DWWIA and IIJA, which is commonly referred to as the Bipartisan Infrastructure Law, or BIL, can offer much-needed help to local governments working to juggle these dynamics. NACWA has engaged with EPA on implementation, and we are encouraged by the efforts of Administrator Regan and Assistant Administrator Fox on this major undertaking to implement the statute expeditiously and ensure it achieves the goals set forth by Congress.

My full written comments, along with a recent funding report NACWA has released last July have been provided to you, so I will try to keep my remarks brief.

I first want to discuss the importance of the Clean Water State Revolving Fund, commonly known as CWSRF. NACWA applauds the bipartisan commitment DWWIA has made to the CWSRF through both direct appropriations and increases to authorized annual funding. These funds are invaluable to POTWs. Nearly all of the Fiscal Year 2022 CWSRF general capitalization grants have gone out to the States, and EPA recently announced the Fiscal Year 2023 supplemental funding that

each State's CWSRF should expect to receive due to BIL.

However, in Fiscal Years 2022 and 2023, Congress has not appropriated at the full levels authorized in BIL, only 60 percent in Fiscal Year 2023, which reduces the overall impact Congress sought to make with this investment package. NACWA is discouraged by the request within President Biden's recently-released budget for Fiscal Year 2024, calling for a level funding of the CWSRF with last Fiscal Year, rather than the increase that Congress authorized in BIL, which would be \$3 billion for next year. NACWA continues to urge full funding for the CWSRF in each Fiscal Year.

The next issue is PFAS. Utilities are extremely concerned about the potential health and environmental risks associated with exposure to PFAS and what it may mean for the future of public clean water utility operations. An important provision in BIL was the allocation of funds for emerging contaminants, including PFAS, through the CWSRF. POTWs are concerned about the looming costs they may face to manage or dispose of these contaminants, which water utilities passively receive and did not create or profit from.

As a new pot of funding, these BIL resources are predictably seeing a slower approval rate than traditional SRF funding. To my knowledge, approximately half of the States have received these Fiscal Year 2022 awards to date.

One obstacle to getting these funding plans approved and funds distributed quickly is that many of the most immediate costs utilities face including monitoring, assessing and implementing pre-treatment programs. However, these important steps are not clearly eligible

under the SRF which focuses on capital investments. State SRFs have the authority to request full transfer of CWSRF funds designated for emerging contaminants to be applied to accounts for drinking water. For this fiscal year, several States have opted to pursue this transfer, Wisconsin included.

This option allows States the flexibility to prioritize their most immediate emerging contaminant needs. But this should not suggest that clean water utilities will not also face significant costs to help control and remediate PFAS in their communities.

NACWA is working with EPA and utilities to identify potential near-term uses that are allowed under the CWSRF. However, Congressional clarity or a distinct pot of funding focused on helping communities assess PFAS sources entering their wastewater streams may be needed.

Another issue we have is how to support customers and ratepayers in need of low-income water assistance and address affordability challenges. BIL directed EPA to conduct a national low-income water needs assessment, which has since been appropriated funding. This needs assessment will help Congress and the public understand the full scope of national hardship in paying water and sewer bills. However, it may not be complete for several years. In the meantime, households continue to struggle.

To help address this challenge, NACWA strongly supports a permanent, reliable source of Federal assistance with full funding to ensure households can afford their water and sewer bills and utilities have the resources they need to make critical investments.



Finally, NACWA and I appreciate the opportunity to share our views on the implementation of DWWIA and IIJA. I am proud of the work that the public wastewater sector has accomplished to date to advance public health and environmental protection. Our Nation's understanding of the complexity of water quality challenges only continues to grow.

I hope that my testimony shows how these investment packages are providing initial investments in making our wastewater infrastructure safer and more resilient and responsive to new threats like emerging contaminants, while emphasizing the vast need for funding and how we hope this investment is only a start.

We sincerely hope this increased Federal cost share for water will become the groundwork for greater Federal investment to meet our growing water challenges in the years ahead. Continued resources and assistance from the Federal Government are critical to ensure that all water and wastewater utilities are prepared to meet the challenges of today and tomorrow, starting with full funding of the Bipartisan Infrastructure Law.

I am happy to answer any questions you might have.

[The prepared statement of Mr. Sigmund follows:]

Senator Capito. [Presiding.] Thank you, Mr. Sigmund. We appreciate your testimony. We will now turn to Ms. Kathy Emery. Kathy is the Director of the Division of Water and Waste Management at the West Virginia Department of Environmental Protection. Welcome to you, we are glad that you are here, from my home State of West Virginia. I understand the legislature just put another responsibility onto you as well. So thank you for taking that on, whether you wanted it or not.

STATEMENT OF KATHERYN D. EMERY, DIRECTOR, DIVISION OF WATER AND WASTE MANAGEMENT, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Ms. Emery. Thank you. Good morning and thank you, Chairman Carper, Ranking Member Capito and all members of the committee, for the opportunity to testify before you on the Drinking Water and Wastewater Infrastructure Act, which is included in the Infrastructure Investment and Jobs Act.

My name is Katheryn Emery, and I am the Director of the West Virginia Department of Environmental Protection's Division of Water and Waste Management. I have either worked in or managed West Virginia's Clean Water State Revolving Fund for the past 28 years.

I am truly honored to represent West Virginia today to discuss with you the funding opportunities provided in the Infrastructure Investment and Jobs Act, as well as current water infrastructure challenges and ongoing unmet needs in small, rural, and disadvantaged communities.

Considering that only 50 of West Virginia's combined 671 drinking water and wastewater utilities serve a population of greater than 10,000, I think it is safe to say that West Virginia is on the front lines of facing the challenges of meeting the needs of small, rural, and disadvantaged communities. The difficulties to providing services to these communities is very real. The reality of small numbers of customers, topographical challenges, and low incomes make it very difficult to find an affordable solution to meet the needs of residents.

Even with 100 percent principal forgiveness and grant funding,

customers fund the rates to support only the operation and maintenance expenses a challenge. In addition, our communities are also struggling to find and pay qualified operators.

Infrastructure needs cover providing safe drinking water and treated wastewater to unserved communities, upgrading old and failing infrastructure, locating and addressing lead service lines, and preparing to meet upcoming PFAS standards as well as any other new regulatory initiatives.

The supplemental funding from the Act means a lot to our communities that are trying to address these challenges. For example, the number of applicants for a project priority list jumped from 101 to 175 in the Clean Water SRF, and from 29 to 157 in the Drinking Water SRF, as our communities are preparing to take full advantage of this historic opportunity.

West Virginia has been utilizing multiple approaches to address these issues. Co-funding and collaboration with other funding agencies and providing technical assistance are some of the tools that we are using to fully utilize all available State and Federal dollars to provide safe drinking water and treated wastewater to as many citizens as possible.

With that being said, I ask for your consideration of a few suggestions to help us be even more effective in funding projects to meet the intent of the Act. The most effective part of the SRF programs is the flexibility to tailor the programs to meet individual State needs. States must have the ability to determine their own definition of disadvantage, and develop their own priority criteria to

best meet the needs of the citizens of their States.

Each of the changes and new initiatives crafted within the Act also need to maintain that flexibility. As you can see from my written testimony, there are several suggestions for additional flexibility that, if provided, can help States maximize the utilization of this funding to fit their individual situations.

It has been my experience that when working with small utilities and communities without access to adequate water and wastewater infrastructure, situations and needs arise that have never really been contemplated. That is why it is so critical that we be very cautious about writing policies and guidance documents that limit the abilities of the SRFs and other funding agencies to adapt to changing needs.

The one-size-fits-all approach doesn't work when trying to apply solutions that work for large, existing utilities to communities trying to either improve or provide service to, at most, hundreds of customers.

Thank you again for allowing me the opportunity to discuss these issues with you today. The problem is always finding a sustainable and affordable solution to communities with small numbers of customers, and the funding provided through this Act will help us to address this problem with many disadvantaged and unserved areas.

Thank you.

[The prepared statement of Ms. Emery follows:]

Senator Capito. Thank you, Ms. Emery, and thank all three of you.

The reason it looks kind of blank up here is that we are in the middle of a vote. Chairman Carper went to make his vote, so I will take the time to do my questioning, then I will have to leave and do my constitutional duty.

Ms. Emery, let's get to the flexibility issue. You heard me ask Assistant Administrator Fox about this. There was a January 6th memo that EPA put out, a guidance memo, that encouraged and sort of sought to impose some of EPA's priorities through, in selecting community investments. This is what I was trying to say to her, is exactly what you said much better in your statement: leave us the flexibility to do what we want and what we know is best for our communities as we tailor them.

What kind of challenges and concerns do you have that this EPA guidance may be trying to rein in some of your flexibility?

Ms. Emery. I am a little concerned by that memo. It was a bit of a surprise. I do want to start off by saying that this past year, we had a lot of conversations with EPA Region III. They are an excellent funding partner with West Virginia. They were asking questions about how we evaluated our affordability criteria, the prioritization criteria. EPA's guidance had a lot of suggestions for States to consider, and we did take advantage of those suggestions, and we did make adjustments in our intended use plan.

But when I am reading this memo and it is talking about additional criteria, in addition to the use plan checklist, when it is

talking about implementation of a priority criteria that they are developing in coming months, that they are going to be accessing our IUPs based against that.

Senator Capito. So you haven't even seen that yet?

Ms. Emery. I have not seen it. It is saying it is in development. So it has me a little concerned that there is going to be criteria that they are going to ask us to incorporate into our intended uses.

Senator Capito. So you could create your own plan, tailor it to your own, as Congress intended, tailor it to our State of West Virginia and to our small, disadvantaged communities and smaller communities, because that is basically what we are in a lot of ways, very small communities, you formulate all this, you get your technical expertise together, you formulate the plan, it goes to EPA and then all of a sudden they come back with criteria you haven't seen to say, but you are not doing this and this.

Is that the concern? Am I hearing that correctly?

Ms. Emery. That is my concern. I am wondering where this memo is taking us at this point.

Senator Capito. Did they give you a time frame on that?

Ms. Emery. No. I do have a list of questions, it is in the memo, we are set up to have a conversation with Region III. But like I said, I have not seen whatever this priority criteria is.

Senator Capito. Mr. Sigmund, are you hearing this across the Country, same issue?

Mr. Sigmund. I am not familiar with the most recent. Our

experience with the State of Wisconsin Clean Water Fund has been very positive, and that has been over the last year. They have taken what they received from EPA. We have formed a working group with our Clean Water Fund. We have expanded the definition of what is considered to be a disadvantaged community, but have not excluded those that are historical.

So I am not as familiar with the most recent changes.

Senator Capito. Thank you.

Ms. Emery, I think you and I can talk about it. I thought it was interesting that Senator Lummis talked about leakage of water out of small systems. We know that is a huge issue for us. We have some lead, we know that was discovered in the north central part of the State, and is probably more predominant in other areas of the State.

What do you think our biggest challenge is, specific to our State, in water infrastructure for these small and rural? Is it going to be the testing for PFAS as we see it come through the destruction of PFAS, what are we going to do with it when we get it? How are we going to replace our filters? I am naming some of the things, if you could, from your perspective.

Ms. Emery. I think the primary thing is affordability and sustainability for our communities.

Senator Capito. For the systems or the individuals, or both?

Ms. Emery. Yes, all of the above.

Senator Capito. Okay.

Ms. Emery. In addition to just what we were talking about, maintaining existing infrastructure, extending sewer services out to



other communities, other areas. Now we are trying to assess the PFAS situation in West Virginia, where is it, where is the contamination coming from. And we are adding lead service lines on top of all of that.

So it is a lot for all of these communities to take on. We are working with them on these one by one. That is why the flexibility of the SRFs I think has to be maintained. Our communities, some of the more rural, disadvantaged, trying to gather enough grant funding and debt forgiveness to support just the projects that they have, because they can't sustain debt service. They are struggling just to pay their operation and maintenance.

Senator Capito. Right. The customers can't afford another rate hike. I know that is always part of the consideration.

Ms. Emery. An example for that is the community of Iaeger in McDowell County. It is one of our most economically distressed counties. We are finally getting a sewer system into Iaeger. It is a combination of a lot of grant funding sources.

But I was looking at the combined water and wastewater rate for those citizens. It will be over \$100 a month. It will be over 3 percent of the median household income, just for water and wastewater. That is without adding on other considerations going forward.

Senator Capito. Thank you. I am going to run and do my vote and I think Senator Ricketts is going to take the gavel. Thank you.

Senator Ricketts. [Presiding.] Thank you very much.

Since Senator Kelly just got here, I am going to go ahead and ask

my questions, if that is okay. We just had a Republican go. If you want to go, I can let you go first.

Senator Kelly. I am ready, if you are okay with that, Senator.

Senator Ricketts. Then I will let you go.

Senator Kelly. All right. Good morning, everybody, thank you for being here.

Mr. Hayman and Mr. Sigmund, in the last Congress I worked with Senator Risch to introduce the Water Infrastructure Modernization Act, which would provide dedicated EPA funding for smart water and wastewater technologies, like pipeline leak detection systems and sensors and smart water meters. We are hoping to reintroduce this legislation and see progress made on the legislation during this Congress.

For both of you, can you speak to how your systems use smart water technologies to reduce water loss and improve system efficiencies, and how would additional Federal resources such as through the Water Infrastructure Modernization Act help water and wastewater systems further deploy these technologies?

Mr. Hayman. I will gladly take that question, Senator. It is important that as a water utility that we keep evolving. One of the main things we have to do is use technology to our advantage, and do it in a way that is economically feasible. Affordability is a big issue. But when we are able to use

technology in the big picture to develop a system that is responsible to our customers, we are doing what is the right thing to do.

As far as smart technology, we have AMI, the Automated Meter Infrastructure program, where we are able to take real-time information about water usage. So you go to the app, go to the website and look and see, what is my bill. What happens in that situation, instead of having a running pipe, let's say a broken toilet that you are not aware of in the basement, and your bill is going up, you will be able to go to the site and you will see what your bill is. That information truly is power and allows you to be more economically sensible in how you are handling your household economics.

The bottom line, too, is we also have systems that allow us to hear leaks in pipes. We had a situation where there was a leakage, we couldn't find it. We used the technology, we are working still to pinpoint it, but we are a lot closer than we were before.

So the use of technology is important. The funding is imperative, because all the things we want to do cost. We are dealing with a situation where rates are getting higher and higher, coming to a level of not being sustainable for many in our communities.

So any monies we are able to receive to allow us to assist

the customer and to allow us to keep our rates low or not to increase at all, it is beneficial to the entire community.

Senator Kelly. Do you have any examples of percentage wise, or gallons or acre feet of water that a specific investment has resulted in? Any anecdotal example.

Mr. Hayman. I would have to go back and supplement the record after the hearing on that. But I must say that the AMI process, of being able to have real-time information, is truly important, and it is revolutionary in Philadelphia. What is happening is that people can monitor the water usage, they can monitor if there is a leak in a pipe. It is a \$100 million project. But it is going to be greatly beneficial for decades to come.

Senator Kelly. Mr. Sigmund?

Mr. Sigmund. Coming from a clean water utility, water loss is not a concern for us. But in the implementation of smart technology, in our interceptor systems, we do use some of the smart meter covers to be able to identify, during periods of wet weather events, high flows that we might either reroute flows if that is possible. Because oftentimes rainfall is not uniform across the service area. Or to be able to deploy forces to potentially mitigate some of the problems with high flows.

Within our treatment facilities, we are a huge energy user. So we have used smart technologies to be able to analyze how we

use energy and possibly tie it to some of our aeration equipment to maybe slow down some of the aeration equipment when it is not needed to run at quite full capacity.

The ability to mine this tremendous amount of information that we collect, we collect tons of information and our staff can only manage so much, we have gone to technologies to be able to predict where we would go, which helps our operators make better decisions.

So the smart technology in wastewater and utilities is being used and it is being beneficial and, I mentioned with staffing, as we are struggling to continue to find treatment operators, maintenance and electrician technicians, that smart technology is allowing us to stretch those forces a little farther.

Senator Kelly. Thank you, and thank you, Senator Ricketts. I yield time that I don't have. I yield back nothing.

[Laughter.]

Senator Carper. [Presiding.] Thank you.

All right, Senator Ricketts you are in it for the second round, I think.

Senator Ricketts. Thank you, Chairman. Actually, this is the first time with this panel.

We had Administrator Fox here earlier talking about PFAS. So I am going to give you all a question, for the entire panel,

what types of tools would be helpful in addressing the impacts to water infrastructure that especially I am concerned particularly about rural communities, when it comes to PFAS? What are some of the tools you have seen that are going to be helpful as we go through this rulemaking to be able to make sure communities can apply? Do you want to start, Mr. Hayman?

Mr. Hayman. With PFAS, I think a couple of things. One, it is important that we understand what are we looking at, that we understand what the numbers are. We are going to be receiving a lot of new data on PFAS, so it is important that we work closely with the scientists and engineers to see, what does that really mean.

The other part of it is that anything that we do with PFAS, it is going to be an additional cost. It is going to be an additional burden to the ratepayer. So it is imperative that we receive some funding to assist us in making sure that we are not putting upon the ratepayer a burden that they can't carry, or additional bills they would have to cover.

Basically, though, I would say that we are going to have to work with our engineers to evaluate it, to make sure we have the machinery to do it. I have to say this: I am very proud of Philadelphia. We are often on the cutting edge, and on this issue, we are on the cutting edge of evaluating PFAS. We have been doing that voluntarily for over a year. We have been

putting the information that we find on our website.

Also, we have been transparent. I think that is going to be a major part of being successful as a water utility in this Country, that we cannot go back to how we operated in the 1950s, 1960s. There is a need to be transparent. We have done that as far as releasing information and keeping the public informed.

We have to make sure we have the machinery we need and equipment we need to analyze it. We have to understand what we are looking at and we have to be transparent as far as releasing information and educating the public on what we have.

Senator Ricketts. Do you have any idea of how much, just ballpark, what it is going to cost to be able to do that?

Mr. Hayman. I don't know. In all honesty, the law just changed, the requirements changed yesterday. It is now four partners per trillion; before it was, in Philadelphia, I think it was about 14 parts per trillion. So we are going to have to evaluate and make decisions as we go forward.

Senator Ricketts. Thank you. Mr. Sigmund?

Mr. Sigmund. We are just in the process of starting an evaluation, data collection and evaluation process for PFAS in our system. We are expecting to spend between our utility and working with our significant industrial dischargers who we believe might discharge PFAS probably in the vicinity of \$100,000 to \$200,000 a year for the testing and the analysis.

So that is going to be the first step for us to try to understand where this is coming from. That testing process is not easy. The analysis process is not inexpensive. So that is a big part of it.

One thing I wanted to mention, probably the biggest concern for myself as a utility, is CERCLA in terms of PFAS. As the rule is currently written, wastewater utilities, even though the EPA says they do not play to call us as a principal responsible party, my utility experience with PCBs over about two decades was that we spent in excess of a million dollars to both, through legal fees as well as being considered to be a de minimis party.

So yes, EPA says, we are not going to consider you to be a principal responsible party, but that doesn't mean that the principal responsible parties won't come after us for contribution. That is, I think, going to be one of the biggest concerns for utilities, is being brought into that entire process. That is why we hope that Congress will grant an exemption to clean water utilities.

Senator Ricketts. Thank you, Mr. Sigmund. Ms. Emery?

Ms. Emery. I do share some of Mr. Sigmund's concerns on the part of the utilities. In West Virginia, we have spent the last couple years of doing an assessment of all our drinking water sources in the State, just to try and determine where this



is located, at least starting with the drinking water utilities. We are doing further analysis, further testing, finished water, trying to find out the sources of contamination.

That being said, we are trying to be very strategic on how we address this, where it is located, where it is coming from. So one of the suggestions we would have is allowing more monitoring to be used out of this emerging contaminants funding. It does say that we can use monitoring, but it has to be specifically tied to an upcoming project. But our POTWs are worried about the expense of monitoring on themselves.

So the flexibility to use this funding to do just monitoring and studies, just to figure out the realm of the problem we have, would be very beneficial.

Senator Ricketts. Thank you.

Senator Carper. Senator Ricketts, that is it for you, my friend. I am going to ask a couple of questions, and that might be it. Thanks for being here twice for two rounds. That is good, thank you.

I have three questions; we have three panelists. I am going to ask each of you a question. We will start, Mr. Hayman, with you again. The Bipartisan Infrastructure Law, which I think I can speak for my colleagues and I here, is one of the things we are proudest of that we have worked on in our lives. It was a great bipartisan triumph with the leadership of the

President and Democrats and Republicans.

The Bipartisan Infrastructure Law provided I think more than \$11 billion to the Drinking Water State Revolving Loan Fund over five years. That law dictates that some 49 percent of each State's annual funding allocation "shall be used by the State to provide grants, forgiveness of principal, or a combination of both."

Whether a project is eligible for a grant from the SRF as opposed to a loan is determined by each State's rules on this subject. Some of the State-determined affordability criteria, however, prevent large cities like Philadelphia from being able to receive grants for loan forgiveness for water infrastructure projects that would benefit low-income, disadvantaged, and minority communities living with a larger metropolitan area.

Has Philadelphia had trouble accessing the grant funding provided for in the Bipartisan Infrastructure Law? What kinds of projects do you think these grant funds could support if the affordability criteria was changed?

Mr. Hayman. Thank you, Senator. Thank you very much for the question.

The bottom line is yes, we are having difficulty in receiving grants from the PENNVEST State Revolving Fund, primarily because of the way they determine economic feasibility or accountability. Basically what they are saying is that our

rates are too low. What is happening is they are looking at what people are able to pay across the entire board. While there might be one area that is richer than another, that skews the numbers. As a result, despite the size of Philadelphia, despite being one of the largest, poorest cities in the Country, we are in a situation where we are not able to obtain the grants.

As a result, we receive loans, and those loans then put a burden on the customer, because those loans have to be repaid.

Now, let me also answer your second part, if I may. You stated that there is, what projects could we do. There are a plethora of projects that we have. As I said earlier, our engineers are smart, and we have tons of projects that we could work on. One of them is our Water Revitalization Program. It is going to turn around and have 400 projects that allow us to rebuild our water plants, our transmission mains, and make sure we have the tunnels we need to transport redundancy and transport the water across from different water utility parts.

So in the end, there are pipes that can be replaced or plants that can be repaired, there are a number of projects we would use the monies for. Again, grants are better than the loans, because they do not place an economic responsibility on the customer down the road. They don't have to be repaid.

Senator Carper. Good. Thank you.

My second question, Mr. Sigmund, according to a report by the National Association of Clean Water Agencies and the Association of Metropolitan Water Agencies, it is estimated that drinking water and wastewater utilities will need an additional \$448 billion to \$944 billion between now and 2050 to make their systems more resilient to extreme weather events. The Drinking Water and Wastewater Infrastructure Act created several new grant programs focused on providing resources to drinking water and wastewater utilities who wish to improve their systems' resiliency to extreme weather events and other threats.

While I was glad to see those programs receiving funding last year, the appropriated amount was well below the authorized level. Do you think it is important for Congress to fully fund the resiliency program created in the Drinking Water and Wastewater Infrastructure Act, and how would those programs be used to address specific problems caused by climate change?

Mr. Sigmund. I would answer yes, it is very important for Congress to fully fund these programs. What NACWA has provided to you is not an exaggeration. It is where we see the state of our infrastructure; we are a very heavy capital infrastructure. We make it last a long time but it doesn't last forever and needs to be replaced.

The resiliency from climate change, in my utility we have seen our system be stressed three times in the last five years

at its maximum capacity. We are able to deliver service because we had all of our equipment able to be in service, which is not always the case, because of maintenance.

So we are seeing in our State of Wisconsin and our area not necessarily more rainfall throughout the year, maybe a little bit more, but it is coming at different times and with greater intensity. Our infrastructure needs to be upgraded to be able to handle these peak flows.

Senator Carper. Thank you. I have one more question for Ms. Emery. We have been joined by Senator Markey, and I am going to yield to him for any questions he might have. Senator Markey, welcome, good afternoon.

Senator Markey. Thank you, Mr. Chairman.

Senator Carper. Have you voted twice?

Senator Markey. I have voted, yes. Have you voted?

Senator Carper. Just once.

Senator Markey. Thank you all so much. In 2021, a malicious actor hacked into a water treatment facility in Florida and increased the level of lye, an ingredient used in soap and fertilizer in the water by over 11,000 percent. Fortunately, an operator noticed the intrusion. That attack was a wakeup call.

Strengthening the security of our clean water and wastewater systems is a complex task. But it starts with

information. That is why the Water Information Sharing and Analysis Center, or Water ISAC, is so important.

Mr. Hayman, can you briefly explain to the committee the benefits of Water ISAC for utilities, information sharing for utilities?

Mr. Hayman. The old adage that information is power comes to mind. Basically, the Water ISAC, by being a member of that organization, information regarding cybersecurity or weather issues, climate change issues, all come to one depository. So it is gathered, it is analyzed, it is distributed. It ends up helping those who are members of it in being able to make analyses and make the right decisions.

After the recent train derailment in East Palestine, Ohio, Water ISAC disseminated a bevy of information to nearby communities about risks to water quality and protective actions they could take. So it really gives them real-time information, and again, information is power.

Senator Markey. Thank you. Absolutely.

Last week, I introduced the Water System Threat Preparedness and Resilience Act, which would provide funding for clean water and wastewater to become members of Water ISAC. My legislation fills the critical funding gap for small water utilities to join this critical information-sharing network and helps expand access to essential resources.

Mr. Hayman, do you agree that Congress should pass the legislation so that we should increase the information sharing, smaller utilities gain access to this information as well?

Mr. Hayman. Absolutely. Absolutely, because the more organizations are able to have access to it, the better we are able to protect the health and safety of everyone.

Senator Markey. So these small water agencies, they deserve that same kind of information?

Mr. Hayman. Absolutely. Because often, they are left out, and they need it the most. So anything that opens up that door of opportunity, we should do.

Senator Markey. Absolutely. And what we just saw in East Palestine, it is a small community that had a terrible disaster.

Mr. Hayman. Absolutely.

Senator Markey. So we don't need small water systems left out, because they serve populations that could have the same kind of catastrophic circumstances. Thank you for protecting our infrastructure.

Samuel Taylor Coleridge in a poem said, "Water, water, everywhere, but not a drop to drink." Coleridge was right; we all have a thirst for clean and safe drinking water. Yet too many Americans go without access to it in the wake of aging pipes and monitoring systems nationwide. Small and disadvantaged communities face additional barriers to safe

drinking water without the support needed to overcome them. Communities of color are 40 percent more likely to have drinking water systems that consistently fail to meet safety standards in our Country.

To address that clog in the system, in 2019 I introduced the CLEAR Act, legislation to provide more support for disadvantaged communities with additional financial assistance for new provisions, allowing communities to purchase filters, hire technical expertise. I was very glad to see these key provisions included in the Bipartisan Infrastructure Law.

Thanks to the leadership of our Chair and our bipartisan work with the Administration, this funding and other resources are getting out the door and into our pipes. More than \$10 million in EPA funding has been awarded, for example, to Fall River, Massachusetts, after decades of neglect, to help remove lead service lines throughout the city.

Mr. Hayman, will more appropriated funds for the small, underserved, and disadvantaged communities grant program help more of those communities to get the safe drinking water which they are entitled to as well as the large cities?

Mr. Hayman. Absolutely. And it is because the needs of our water utilities are large and expanding. They do not simply stop; they are not stagnant. For example, in the last 15 years, we have had about 700 water main breaks. In the last five



years, there have been about 4,000 water main breaks. They need to be repaired. We have, again, with our Water Revitalization Plan, we have to basically tear down one treatment plant and rebuild it.

So these are expensive projects that need to be done, because so much of our system is at the end of life. If we are able to receive any grants; that helps. Any monies that we receive allow us to lessen the burden that is placed on our citizens, our customers.

Senator Markey. So only \$30 million was appropriated last year for small and disadvantaged communities, even though \$60 million was authorized in the Bipartisan Law. So we have to work hard. We have to get that money so that the smaller communities, the disadvantaged communities in our Country, get the protections that they deserve for their water supply as well.

Thank you all so much for all your work. Thank you, Mr. Hayman. Thank you, Mr. Chairman.

Senator Carper. Senator Markey, thank you. You have a lot going on today. Thank you for making time to be here, and for all of your work on this legislation.

I want to close by thanking each of you for joining us. Some who came from as far away as Philadelphia, just up the road from where my family and I live, and some who came from my

native State of West Virginia, we are delighted, and one who came from one of the great football venues. If I had time to ask one more question, I would ask you the future of Aaron Rodgers on the Green Bay Packers. But we don't have time for that, we can talk later.

But on a more serious note, I want to say this is a serious issue, as you know. People ask me why we concentrate a lot on water in this committee. Without water, we don't have anything, we don't have life, we don't have a good quality of life. It is just incredibly important for our planet and for all of us who are fortunate enough to share this planet.

Speaking of shared, there is a shared responsibility with respect to providing water, wastewater, sanitation, clean drinking water. It is not all on the Federal Government, it is not on the State and local governments, it is not just all on the utilities, it is not just on customers, those of us who drink and use the water. It is a shared responsibility. We all have a role to play.

Our hope is with the implementation of the Bipartisan Water and Wastewater legislation that we passed that we are going to be doing a better job at the Federal level of meeting our responsibilities on this front.

Senators are going to be allowed to submit written questions for the record. They are going to be allowed to do

that by 4:00 p.m. on Wednesday, March 29th, which is about two weeks from today. We will compile those questions, we will send them on to each of you, and ask you to try to respond to them if you will be Wednesday, April 12th. If you could do that for us we would be most grateful.

Additionally, we received a number of statements for the record from a wide range of stakeholders. I would ask unanimous consent at this time to enter these statements into the record. I like to make unanimous consent requests when I am the only Senator in the room, because the only person who could object is me, and I never object to my own unanimous consent requests. That would be a first that you would witness, but you are not going to see it today.

[The referenced information follows:]

Senator Carper. On a serious note, my mom passed away a number of years ago, from West Virginia, born right outside of Beckley in Raleigh County. My mom was a deeply religious woman. She used to drag my sister and me to church very close to where we lived in Beaver, right outside of Beckley, she would drag us to church every Sunday morning, every Sunday night, every Wednesday night and most Thursday nights. People say, do they have church on Thursday nights? Well, we did in Beaver more often than not. Then she would take us home and we would watch Billy Graham on TV.

So one of the things my mom was really intent on instilling in my sister Sheila and me was the Golden Rule, treat other people the way we want to be treated, which is really what we try to do with this legislation. The other thing, a real focus on Matthew 25, looking out for the least of these, when I was thirsty, did you give me to drink.

So I think we have touched a lot of bases here today, but even some scriptural. I want to close with the idea that there is a moral responsibility here as well. It is just not an economic imperative, there is a moral imperative here. I think we are all trying to, regardless of what our faith is, I think we are all trying to meet and reach that moral imperative.

We thank you very much for being a part of all that. With that, I look forward to seeing at least one of you up in

Philadelphia, and another back in West Virginia, and I maybe am going to have to go to another Packers football game. I will never forget that spring training. I have been to a bunch of Eagles games over the years, I thought those fans were pretty rabid. But not nearly as excited as the folks were in Green Bay, at an exhibition game.

With that, this is a wrap. We are adjourned. Thank you all very much.

[Whereupon, at 12:27 p.m., the hearing was adjourned.]