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west virginia department of environmental protection

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## **TESTIMONY OF**

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U.S. Senate Committee on Environment and Public Works

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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 (DWWIA), which was included in the Infrastructure Investment and Jobs Act (IIJA).

My name is Katheryn Emery, and I am the Director of the West Virginia Department of Environmental Protection's (WV DEP) 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'm also the agency's representative on the West Virginia Infrastructure and Jobs Development Council and the West Virginia Water Development Authority Board.

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.

Promoting a healthy environment.

## About West Virginia

To start I would like to give you a perspective of the size of our wastewater and drinking water utilities. West Virginia has 418 community drinking water systems. Of those systems, 175 serve a population less than 1,000, 218 serve a population between 1,000 and 10,000 and only 25 serve a population of greater than 10,000. We also have 253 community wastewater treatment systems. Of those systems, 67 serve a population between 25 and 1,000, 161 serve a population between 1,000 and 10,000, and only 25 serve a population greater than 10,000. So, 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.

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

The challenges to either upgrade infrastructure or provide service to unserved areas in small, rural, and disadvantaged 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 grants funding, the customers find the rates necessary to support only the operation and maintenance expenses a challenge. In addition, our communities are struggling to find and pay qualified operators.

## Federal Funding/SRF Helps West Virginia Address These Challenges

Since the inception of the Clean Water and Drinking Water SRF's, West Virginia's programs have been able to invest over \$1.7 billion toward meeting the State's drinking and wastewater infrastructure needs. Despite this investment, we still have much work to do and the need never ends.

The supplemental funding from the Infrastructure Investment and Jobs Act means a lot to our communities as they work to address these challenges. For example,

the number of applicants on the project priority list jumped from 101 to 175 in the Clean Water SRF program and from 29 to 157 in the Drinking Water SRF program as our communities prepare to take full advantage of this historic opportunity.

To date, the WV CWSRF program has closed on \$2,500,000 in IJJA funding for projects in the communities of Ellenboro and Keyser. The program has also committed another \$11,696,450 in IJJA funding to an additional six projects. The DWSRF program has closed on \$2,624,030 in IJJA funding for the Chestnut Ridge Public Service District. The program has also committed \$8,334,872 in IJJA funding to an additional three projects.

### West Virginia's Strategy To Address The Challenges In Small Communities

**Co-Funding/Collaboration:** In West Virginia, all the funding agencies work closely with each other to find affordable funding packages for these projects. It is a very rare occurrence for a project to be funded solely by the SRF's. In that vein, it would be great if, to the extent possible, federal regulations and implementation policies were aligned across all funding agencies.

**Consolidation:** One of our major focuses lately is consolidation. It is simply not sustainable or affordable to fund a treatment system for each small community. To take a more holistic approach, each project is reviewed for technical and financial feasibility by our Infrastructure and Jobs Development Council, which provides the opportunity for all funding agencies to have open discussions to determine if consolidation is needed and if the resulting project is the best use of funding. The Council also has a Consolidation Committee to study and review this option and the State recently passed the Failed and Distressed Utilities Bill that allows our Public Service Commission to study the situation and place a failed utility under the authority of a responsible, neighboring utility if one is available.

**Technical Assistance:** Regarding the new technical assistance set aside for the CWSRF, I'm proud to say that we stepped out ahead of this approximately six years ago. We began funding a position with the West Virginia Rural Water Association that works with our communities regarding any issues they may be

having. Rural Water evaluates our Significant Non-Compliance list and reaches out to communities that are having trouble meeting their permit limits at no charge to the communities. This new initiative also motivated us to start discussions with West Virginia's Environmental Training Center about outreach to encourage interest in careers as wastewater treatment operators. As you know, this is becoming a critical problem in the water and sewer industry.

A lot of discussion recently has been focused on communities needing help completing funding applications. While I can't speak for other states, this is the least of our problems in West Virginia. Our Regional Planning and Development Councils handle this for their communities. The real challenge is always, finding a sustainable and affordable solution to communities with small numbers of customers which is why our technical assistance program focuses on boots on the ground, one-on-one help to the communities.

### What Congress Can Do To Help Small Communities

We've worked closely with EPA Region 3 and participated in discussions with other states in Region 3 and states participating in the CIFA to gather ideas and suggestions for how to reevaluate our criteria to better distribute funding to disadvantaged communities. Guidance provided by EPA gave multiple ideas and suggestions for states to consider as well. We really appreciated the fact that we were allowed to create criteria that address the needs of West Virginia's disadvantaged communities within our 2023 Intended Use Plan (IUP) and hope that flexibility doesn't change going forward.

However, I am concerned that EPA's January 6, 2023 memo may change this dynamic. It requires EPA regions to go beyond the traditional discussion of Intended Use Plans (IUPs) and SRF annual review to examine state implementation of priorities and project prioritization criteria. It goes on to mention that the Office of Water will work with Regions to assess progress by reviewing IUPs against implementation priority criteria to be developed in the coming months and that the assessment will focus on whether states have incorporated the implementation priorities into the state programs.

States are the experts on how to best get funding to their communities and having EPA Headquarters and Regions deciding as to how each state should implement their program during the approval process of a state's IUP is concerning to say the least. In addition, it is way too early to determine if a state has been successful in getting funding to their communities since it has taken a while for final guidance documents to be released.

With respect to the emerging contaminants funding to address PFAS and other emerging contaminants, we've been working with EPA to understand and implement their guidance. West Virginia has been preparing for the developments of MCL and water quality standards by sampling and locating areas of concern. We've completed the sampling of all raw drinking water intakes and contacted utilities where any measurable levels of PFAS were found. We are continuing in this vein and will be working to locate the sources of PFAS contamination. As a result, two of our drinking water utilities have reached out with projects to address PFAS contamination. However, I'm concerned that the CWSRF program will not be quite as successful with this new funding source until EPA issues a PFAS water quality standard, allows the funding to be used for studies or monitoring, or allows a bit more flexibility in their definition of emerging contaminants.

EPA's definition states that except for PFAS, an emerging contaminant is a contaminant for which there is no water quality standard. Our utilities are struggling to afford to keep up with existing standards, upgrades to keep or bring their systems into compliance, and extend sewer service to areas within their jurisdiction or to their neighbors. Even with 100 percent principal forgiveness or grant funding, it will be hard for them to justify the additional operation and maintenance expenses to their budgets for something for which there is no standard or requirement.

I think it would be helpful if this definition could be opened to at least consider contaminants causing filamentous and harmful algal blooms. Under EPA's guidance for emerging contaminants the purchase of equipment for the physical or chemical removal of harmful algal blooms is eligible, but the removal of the underlying causes of these blooms isn't eligible. These are relatively new battles

and issues for communities, and they occur in areas outside of the Chesapeake Bay, but these communities have not received the attention or funding to help them address the issue.

Regarding the funding for lead service line replacement, we are working to hire a consultant to help our communities with the lead service line inventory that is due by October 2024. In this respect, this program may be a little slow to move with our small communities not really having a good understanding of the amount of lead service lines in their systems. A few of our communities have started to reach out to us concerning this new funding stream and we believe interest will grow as communities move through the process.

A few suggestions to help with this program would be to allow the program to fund all water lines that have a lead component. The current guidance documents restrict the funding only to the service lines, but with the intent of the funding to eliminate as much lead as possible, this should be opened up to provide more flexibility. In addition, it would be helpful if the funding would be opened to allow the states to choose to forgive up to 100 percent of the funding if needed. Since, this is a new initiative and is added to the other federal requirements of our drinking water systems, it would be great if states had the ability to determine to issue principal forgiveness or subsidized loans based upon the needs of the applicants year by year rather than by a pre-determined amount to forgive each year.

As for the Buy America Build America Act (BABAA), we really appreciate EPA's efforts to develop practical waivers for the SRF programs. EPA has been providing great outreach to the states via emails with guidance documents and webinars. In addition, a few of their staff have accepted an invitation to virtually join our Joint Utilities Committee to discuss BABAA implementation. Since this committee is made up of contractors, engineers, vendors, and funding agencies, it will give those that have to implement it the opportunity to engage directly with EPA.

The only implementation issue we are having at this point is understanding the different waivers across different EPA programs and figuring out how to work

with other funding agencies to determine the cognizant agency or program. It would be very helpful to states that co-fund as much as we do for EPA to have the same waivers across all their programs and for all federal funding agencies to work together to try to make their implementation and waivers as similar as possible. Speaking on behalf of the contractors, engineers and others that must implement this requirement, it would be much easier if they had one set of rules to implement the same requirement.

As mentioned previously, a lack of qualified operators is becoming a critical problem. It would be very helpful if some of the funding for technical assistance could be used to address this problem in addition to being used for completing funding applications for communities. Help is needed to encourage skilled workers to consider this as a career path and provide funding to agencies like West Virginia's Environmental Training Center and Rural Water Association to address this issue locally. Can the Environmental Finance Centers that recently received an allocation from the IJA use their resources to address this suggestion? This is an issue that needs to be considered when technical assistance programs are developed.

Thank you again for allowing me the opportunity to discuss these issues with you today. The funding provided by the Infrastructure Investment and Jobs Act is a welcome addition to the annual State Revolving Fund allotments and we appreciate your confidence in our ability to use this funding to further the mission of providing safe drinking water and wastewater treatment to our communities.