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**TESTIMONY OF
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**ON BEHALF OF THE
National Association of Clean Water Agencies (NACWA)**

**SUBMITTED TO THE U.S. SENATE COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS**

**HEARING ON
"Implementing IJJA: Perspectives on The Drinking Water and Wastewater
Infrastructure Act"**

MARCH 15, 2023

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 and I serve as the President of the Board of Directors for the National Association of Clean Water Agencies (NACWA) – for whom I appear before you today. And I am the 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. NEW Water has 101 employees, an annual budget of \$49 million, and maintains 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 we 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 services 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.

BACKGROUND

In this country, local customers and ratepayers have paid for the overwhelming majority of investment in water and sewer infrastructure since the 1980s. Local communities cover most of the capital investment, operations, and maintenance needed to provide clean and safe water. Not surprisingly, the costs of providing clean and safe water have been growing

for years and, by extension, rates have also been increasing to meet this cost. This can be a significant hardship for many in our communities and those of us responsible for setting or influencing rates take the task seriously.

The historic water infrastructure investments in the *Drinking Water and Wastewater Infrastructure Act* (DWWIA) and *Infrastructure Investment and Jobs Act* (IIJA), which is commonly referred to as the *Bipartisan Infrastructure Law* (BIL), can offer some much-needed help to local governments working to juggle capital funding needs and ongoing operations and maintenance while keeping customer rates manageable.

According to a *Water Infrastructure Funding Parity Report* issued by NACWA last July:

“Federal spending on water utilities represented approximately 5.9% of total annual spending in 1970 and approximately 3.7% in 2017. In contrast, state and local spending was 272% higher in 2017 than it was in 1956. The peak in the federal funding for the water sector occurred in the 1970s and 1980s with the Construction Grants Program, which provided more than \$60 billion in federal grants for the construction of public wastewater treatment projects. Today, the Infrastructure Investment and Jobs Act (“IIJA”) will increase federal funding for the water sector from approximately 4% of the overall funding need to approximately 11% of the overall funding need. However, in contrast to the Construction Grants Program, much of the funding provided by the IIJA will be in the form of loans, not grants.”

BIL can help alleviate this strain on customers facing communities of all sizes, urban and rural. Deployed fully and strategically, BIL will lead to more resilient infrastructure and help ensure clean, safe water for all. But rising costs, unauthorized funds and the threat of massive new regulatory liabilities could also blunt the impact this transformative legislation would have. We need to work together to ensure BIL does not simply patch holes or fill gaps but truly sets us on a path toward a more sustainable clean water future for all. Clean water utilities are eager to leverage these federal investments as BIL implementation continues in earnest. NACWA has been engaged with EPA during this process and we are encouraged by the efforts being led by 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.

I want to flag a few areas in particular that we strongly supported in the legislation and that we are keeping an eye on as areas of opportunity for which may need further Congressional attention in the years ahead.

CLEAN WATER STATE REVOLVING FUND

NACWA strongly applauds the bipartisan commitment leaders of this committee made in advancing investments through the Clean Water State Revolving Fund (CWSRF), including both direct appropriations and increases to authorized annual funding. The CWSRF is invaluable in supporting public wastewater utilities as they deliver on their missions to provide clean water services. Nearly all of the first year (FY22) BIL CWSRF general capitalization grants have gone out to the states, and EPA recently announced the FY23 amounts each CWSRF can expect.

According to the Wisconsin DNR Clean Water Fund Program Annual Report for State Fiscal Year 2022, the state’s administered CWSRF issued 48 new loans totaling almost \$300 million in federally eligible costs during SFY 2022 and disbursed funds to existing projects of over \$325 million. These projects helped to protect public health and the environment through projects seeking to improve water

quality, reduce energy use and phosphorus loading, and help utilities become more resilient, sustainable, and adaptive to emerging challenges like climate change.

In FY22, Wisconsin received nearly \$32 million in base CWSRF allotment with an additional \$48 million coming through BIL funding. For FY23, Wisconsin will receive nearly \$57 million through BIL general capitalization.

However, two key factors could limit the reach of BIL that Congress was seeking to provide.

First, in FY22 and FY23 Congress has not appropriated at the levels authorized in BIL – only 59.6% in FY23 – thereby reducing the overall impact Congress sought to make toward addressing the federal water funding gap.

NACWA is discouraged by the request within President Biden’s recently released budget for Fiscal Year 2024 calling for 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 each fiscal year.

Second, the reestablishment of Congressionally Directed Spending is being funded in the water space from baseline appropriations of the annual CWSRF, rather than allocated from a separate, additive funding source that would put more money on the table for water infrastructure work.

NACWA appreciates and supports Congress targeting funding to specific clean water needs and we fully support the right of individual communities to seek funding directly through individual Members of Congress. However, the practice of redirecting funds from capitalization grants has the real impact of reducing resources available in a state’s CWSRF and can lead to fewer projects receiving loans or grants, especially given that these funds are not being fully appropriated at the authorized levels. Assuming Congressionally Directed Projects continue to be provided, NACWA recommends using separate dedicated funds for those projects to preserve the recapitalization capacity of the SRFs.

PFAS

Public clean water utilities are extremely concerned about the potential health and environmental risks associated with exposure to per- and polyfluoroalkyl substances (PFAS) and what these substances may mean for the future of public clean water utility operations.

An important provision in BIL was the specific allocation of federal funds for Emerging Contaminants, including PFAS. Emerging contaminants are a growing concern around the country and threaten to drive up costs at water and wastewater utilities in a massive way, including for the disadvantaged communities that the BIL funding was meant to help. Clean water utilities are concerned about the looming costs and regulations they may face to manage or dispose of contaminants like PFAS – which water utilities passively receive and did not create or profit from.

NACWA maintains that the polluter, not the innocent ratepayer, should be held responsible for PFAS costs. Absent such funding support from the polluters, these costs will inappropriately and inequitably be borne by local clean water utilities and their ratepayers.

As a new pot of funding, the Emerging Contaminants funds provided in BIL through the SRFs are predictably seeing a slower approval rate than traditional SRF funding. To my knowledge approximately half the states have received these FY22 awards to date.

One obstacle to getting these funding plans approved and funds disbursed quickly, which we have discussed with EPA, is that some of the most immediate costs clean water utilities are facing to proactively try to understand and limit PFAS in their systems include monitoring, assessments, and implementing pretreatment programs – working with industries to reduce concentrated PFAS discharges into our systems. However, these important steps are not necessarily eligible uses by statute for BIL funds as those dollars are coming through the SRF, which is focused 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, with Wisconsin included. This option allows states flexibility to prioritize their most immediate Emerging Contaminants 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 has been working to identify potential near-term clean water utility uses that align with the CWSRF and providing EPA and our members with recommendations. However, Congressional clarity may be needed to ensure these funds can be fully put to use or provide other funds for the work that public clean water agencies are doing to understand and control PFAS before they enter the utility system or are released to the environment.

Another issue critical to the entire water sector will be protecting water systems and their customers from the potential legal liability, remediation costs, and reputational risk associated with EPA's proposed hazardous substance designation of PFOS and PFOA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA is intended to uphold a "polluter pays" principle, whereby those responsible for releasing hazardous substances into the environment are held liable for the cost of cleaning up contaminated sites. However, absent a statutory exemption from PFAS liability for drinking water and wastewater systems that passively receive PFAS in providing their respective public health services, polluters could pass these costs on to our customers and your constituents, effectively creating a "public pays" principle under CERCLA. These costs and liabilities would far exceed any funding provided in BIL.

NACWA and our sister associations have taken these concerns to EPA, and the Agency has indicated that they recognize water utilities should not be liable. However, EPA believes it does not have the authority to provide any formal legal shield, leaving water systems with a commitment that would be formalized through a policy memorandum, at best. This leaves water systems and their customers vulnerable to litigation by potentially responsible parties who may attempt to reduce their own cleanup costs by recovering from others, especially as EPA examines whether to designate additional PFAS as hazardous substances. For this reason, the only viable option for water systems and ultimately the public is for Congress to provide a statutory exemption from PFAS liability for drinking water and wastewater systems under CERCLA.

CLEAN WATER NEEDS SURVEY

NACWA thanks Congress for recognizing the importance of a robust, updated Clean Water Needs Survey by authorizing \$5 million to EPA for this purpose in BIL. An updated survey is a critical step to understanding the total investment needed to maintain clean water services in every community in the country and will help guide future Congressional investment. NACWA is working with EPA and the states to maximize the reach of this survey to ensure a full accounting that will help guide future federal clean water investment.

ENVIRONMENTAL JUSTICE

Public clean water agencies are anchor institutions that play a vital role not only in providing environmental and public health protection to local communities, but also in helping advance equity, fair treatment, and meaningful involvement for all residents.

An important provision in BIL that has gained a lot of attention is how 49 percent of the dollars flowing out to the traditional SRF programs must be allocated by the states as additional subsidy – meaning that rather than low-interest loans, they are forgivable loans or grants. This provision will be particularly important for getting federal help to disadvantaged communities that might not have the capacity for loan financing and to target areas facing serious need or financial hardship.

Because the SRFs are run through the states – each of which has its own rules for applying additional subsidies – EPA has provided recommendations for how states should consider targeting the subsidy to reach potentially eligible areas and communities. Strengths of this guidance including encouraging states to look beyond singular metrics of disadvantage and consider various metrics like unemployment, how water and sewer rates compare to lowest quintile income, and ensuring funds reach urban areas of poverty as well as rural and small communities.

While EPA has laid out guidance, the task of implementation falls to the states. Given the significant influx of funding, NACWA strongly believes that states must be innovative in how they apply this additional subsidy, and we stand ready to serve as a resource in how states update their definitions. To date, we have heard that numerous states have updated their definitions of disadvantaged communities to be more inclusive. We recommend that Congress continue to monitor how additional subsidies are applied and remain open to potentially providing further direction to the programs as implementation advances. This will help ensure that BIL addresses pervasive issues of equity and access to infrastructure funding.

This is also an area where clean water utilities can help achieve the goals of BIL. Particularly in the case of relatively large, regional sewer systems serving a range of communities within a service area – as is the case with my utility, NEW Water – public clean water utilities should be looked at as potential partners to secure and disburse BIL funding on behalf of communities in their region. Public clean water agencies can help the small and disadvantaged cities and towns in their area secure federal assistance for which they otherwise may have struggled to identify as an opportunity, identify a project, apply, and administer funds. Regional clean water utilities can help provide the outreach, technical support, and potentially financial strength to help disadvantaged areas they serve realize the benefits of BIL.

One additional challenge it is important to note is that because the funds are coming through the Loan Funds, in order to qualify, applicant communities need to demonstrate their ability to pay back the funds. This is the case even with the additional subsidization funding, for which the community receives loan forgiveness. This can be a challenge in some instances, for example, stormwater projects that may be eligible under the CWSRF but where a community may not have a sewer fee that can demonstrate the ability to repay a loan (which is eligible for principle forgiveness). I note this to emphasize that while the SRFs are a tremendous tool to deliver federal assistance to local communities, there is also an important role for purely "grant" dollars in the scope of future federal funding.

LOW-INCOME WATER CUSTOMER ASSISTANCE AND AFFORDABILITY

Each month, countless households across America, both urban and rural, continue to struggle to pay their increasing water and sewer bills. Water affordability has been a primary concern for public clean water agencies for years, as the costs of regulatory compliance and maintaining infrastructure rise but household ability to pay has not grown at the same pace. Congress stepped in to help directly address this challenge for the first time during the pandemic, providing emergency low-income water customer assistance funding through the Department of Health and Human Services (HHS). However, that funding will end this fall, potentially leaving many struggling families unable to afford their essential water services.

NACWA applauds Congress for authorizing the establishment of an EPA low-income water customer assistance pilot program. This is a critical step, long-sought by NACWA and other water sector organizations toward our goal of a permanent, reliable source of federal assistance to ensure households can afford their water and sewer bills and utilities have the resources they need to make critical investments. We strongly urge Congress to appropriate funding for low-income assistance.

BIL also directed EPA to conduct a national low-income water needs assessment. Funding for the needs assessment was provided by Congress in the FY23 omnibus. The needs assessment will help Congress and the public understand the full scope of national hardship in paying water and sewer bills. However, the assessment may not be complete for several years and, in the meantime, households continue to struggle.

Another opportunity for Congress to support water affordability is by providing oversight of how EPA addresses affordability issues. Earlier last month, EPA finalized its revised Financial Capability Assessment (FCA) Guidance, which is used by EPA and the states to determine how much a community can afford to pay to meet increasing compliance requirements under the CWA.

NACWA and its utility members have partnered with other water sector and municipal groups in recent years to advocate for a new approach that specifically looks at the impacts of new CWA mandates and related bill increases on low-income households within an impacted community, as opposed to more broad-brush comparisons of community and national level metrics that often serve to mask the actual impact on individual households.

Unfortunately, the new FCA Guidance fails to take this household level approach, meaning that the true impacts on these households may not be fully considered and leaving them to continue paying a disproportionately higher amount of their income on clean water bills.

BUILD AMERICA, BUY AMERICA

The transformative Build America, Buy America (BABA) provisions included in IIJA will have a significant impact on water infrastructure financing. Clean water agencies have implemented American Iron and Steel provisions that have applied to the CWSRF for years, but BABA marks a significant expansion into the manufactured goods and construction materials that utility projects depend on and expands it to other programs, such as WIFIA. NACWA has been actively following BABA's implementation by the Biden Administration.

BABA's implications for utilities seeking to leverage federal programs including the SRFs, WIFIA, and small grant programs will be significant as domestic manufacturers and suppliers shore up supply chains and determine if and how they can demonstrate compliance with the mandates. In the

meantime, utility project planning continues. It is critical for utilities and other public sector entities to have certainty to design, develop, and build infrastructure with an appropriate level of confidence that costs will remain consistent and materials and supplies will be available to complete these important projects.

NACWA was pleased with the flexibility that was provided during the initial stages of implementation. Projects that were in the planning and design phase prior to the statutory effective date of the BABA requirements were waived. This was critically important for water infrastructure projects given that utilities expend considerable time and resources designing projects and selecting materials and providers to meet their unique infrastructure needs. Applying BABA retroactively to projects already in design and engineering would lead to significant time delays, cost overruns, and re-engineering. NACWA supports continued grace periods and flexibility as needed to ensure that BABA is fully implemented in a manner that does not impede the implementation of BIL investments and critical infrastructure projects – and sets the stage for long-term achievement of BABA objectives to bolster America’s industrial base, protect national security, and support high-paying jobs.

AUTHORIZED BUT UNAPPROPRIATED

In addition to providing direct appropriations in BIL for the SRFs, Congress set the stage for long-term increased federal support for water infrastructure by making stepwise increases to annual authorized funding levels. As BIL is implemented, to follow through on the promises of authorizing key programs, Congress should consider providing funding to the series of programs created in IIJA that have yet to see the light of day.

Specifically, NACWA supports efforts by this Committee to ensure full funding for the SRFs as well as for the Sewer Overflow and Stormwater Reuse Municipal Grants, the Clean Water Infrastructure Resilience and Sustainability Program, Alternative Water Source Projects Program, and Water Workforce Infrastructure grants program, as well as to provide funding for the newly-authorized EPA low-income water customer assistance pilot program.

In sum, important opportunities for maximizing IIJA remain and we hope this Committee, as the leading voice in Congress on IIJA implementation, supports EPA’s efforts to implement these programs.

CONCLUSION

NACWA and I appreciate the opportunity to share our views on implementation of the *Drinking Water and Wastewater Infrastructure Act* and *Infrastructure Investment and Jobs Act* and its impact on the nation’s wastewater infrastructure.

I am proud of the work the public wastewater sector has accomplished to date to advance public health and environmental protection. Advances in municipal wastewater treatment have been an indisputable success of the CWA since 1972 – and IIJA will only help to build upon those successes. Our nation’s understanding of the complexity of water quality challenges only continues to grow, which these investment packages recognize by making initial investments in addressing emerging contaminants and addressing climate resilience.

While ensuring the goals of the CWA is not as straightforward as we may have thought 50 years ago, by working together, local utilities, states, and the federal government can and will make continued progress. Additional resources and assistance from the federal government are critical to ensure that

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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 that you might have.