Testimony of

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to the

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Accessing Clean Water Infrastructure Assistance: Small, Rural, Disadvantaged and Underserved Communities

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Testimony

Thank you, Chairman Carper, Ranking Member Capito, Senator Mullin and members of the committee for this opportunity to appear before you and discuss how we can best address the infrastructure funding needs facing small, rural, disadvantaged and underserved communities.

My name is Shellie Chard, and I am the Water Quality Division Director of the Oklahoma Department of Environmental Quality where I oversee the drinking water, wastewater, stormwater, operator certification and training, and funding programs. In addition to my role at Oklahoma DEQ, I am a Past-President of the Association of State Drinking Water Administrators (ASDWA) and Association of Clean Water Administrators (ACWA), a past Board of Trustee member for the Water Environment Federation, Treasurer of the Ground Water Protection Council Board of Directors, and a member of the National Drinking Water Advisory Council. Today, I will discuss my perspectives on:

- Obstacles faced by small, rural, disadvantaged and underserved communities when seeking federal infrastructure funding;
- Gaps in infrastructure funding project eligibility and what is needed by small, rural, disadvantaged and underserved communities; and
- Oklahoma's approach to addressing certain obstacles faced by small, rural, disadvantaged and underserved communities.

Background

The setting of federal compliance standards does not protect public health and the environment. It is the implementation of these standards that achieve the desired protections. For small, rural, disadvantaged and underserved communities federal infrastructure funding is key to their ability to comply with regulatory limits and protect their way of life. In addition, this funding allows these communities to compete for new or expanding industries which provide opportunities for economic growth and provide opportunities for residents to work close to home and support other local businesses.

On March 3, 2021, the American Society of Civil Engineers (ASCE) released its Infrastructure Report Card.[1] ASCE graded drinking water infrastructure a C- and wastewater infrastructure a D+. Water and wastewater infrastructure is aging and substantially underfunded. According to the report, "there is a water main break every two minutes, and an estimated 6 billion gallons of treated water lost each day in the U.S."[2] While there are signs of improvement including increased use of asset management in the industry and innovative technologies being introduced, restorative and preventative actions by water and wastewater systems take money and a properly trained workforce. Economic prosperity is dependent on sustained infrastructure investment at all levels of government. Delaying investments in water and wastewater infrastructure increases capital costs and the risk of catastrophic failures.

[1] America's Infrastructure Report Card 2021 | GPA: C-
[2] *Ibid.*

Oklahoma is a state that encompasses approximately 70,000 square miles and has a population of just under four million people. Approximately 3.1 million of those residents are served by one of the 1274 public water supply systems and slightly under 3 million are served by one of the 772 publicly owned treatment works. Many of these water and wastewater systems serve populations under 500. Without the federal infrastructure funding they would be unable to provide vital water and sanitation services to their citizens.

Successes and Recommendations

More than three decades ago, Congress established the Clean Water State Revolving Funds as federally subsidized loan programs to provide affordable financing for municipal water infrastructure for the protection of public health and the environment. Since then, the Clean Water SRFs have used $52 billion in federal capitalization grants to generate $163 billion in financial assistance for more than 46,000 clean water infrastructure projects in communities across the nation. Because of Congress' foresight and fiscal responsibility, the Clean Water SRFs are generating a recurring, renewable source of revenue to meet the never-ending need to repair, rehabilitate and replace aging water infrastructure. As of 2022, loan repayments permanently revolving in the Clean Water SRFs topped $63 billion.[3]

Obstacles to Securing Funding

Navigating the funding options and application process can be difficult for small, rural, disadvantaged and underserved communities. Each funding agency has different qualification and application processes. Without specific assistance, these communities may not develop the most beneficial funding package. (See discussion below under Oklahoma's Approach for the Funding Agency Coordination Team) This could lead to higher loan to grant ratio or higher interest rates. Congress can assist these communities by continuing to provide program implementation costs to the SRF agencies so that they can continue to provide application assistance to funding applicants.

In order to determine what infrastructure project is needed, the small, rural, disadvantaged or underserved community must hire an engineer to evaluate the treatment system and associated pumps and pipes. They must pay for these costs upfront before they can apply for funding. In some states, these systems can apply for a planning grant that can pay the engineering costs but again an application is required. Congress could provide language in an appropriation bill or program authorization that would establish funding for these necessary engineering services.

Similar to procuring engineering services, another hurdle that systems must overcome is related to sampling and laboratory analysis to identifying the presence of an emerging contaminant. If a small, rural, disadvantaged and underserved community has monitored and identified a particular contaminant, the SRFs can fund additional sampling to identify the extent of the contamination. However, if the contaminant has not already been detected through a study, funding is not available. Congress could clarify that the Emerging Contaminants funding can be used for the initial sampling study.

[3] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

Water and wastewater systems often struggle to comply with the Build America Buy American Act (BABAA) and in some cases prevent these small systems from applying due to fear of failing to comply with the provisions. The requirements for compliance are different for the various funding programs including funding programs in the same agency. In testimony[4] before the US House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, Lori Johnson on behalf of the Council of Infrastructure Finance Authorities, included recommendations the Congress could address that would strengthen the implementation of and compliance with BABAA for all borrowers. These recommendations include:

- Leveling the playing field by applying BABAA consistently across funding programs;
- Develop clear and consistent standards for funding recipients to demonstrate compliance with BABAA;
- Clarify that compliance with the American Iron and Steel Act satisfies compliance with BABAA; and
- Codifying the existing BABAA waivers for the SRF.

There are an entire set of obstacles that are driven by the implementation of the funding programs by the Environmental Protection Agency (EPA). Communities and state program staff see and hear announcements of funding that Congress has made available. The small, rural, disadvantaged and underserved communities immediately start reaching out to find out what the requirements are for those funds. It can be a significant amount of time after the funding allocation is announced before states receive the information on what is required for EPA to award the funding to the state SRF program. The states often wait months following this announcement to receive the guidance documents or requirements for the eligible projects. The state SRF programs must wait until they have this information from EPA before they can begin the outreach to eligible systems to help them apply for the much-needed infrastructure funding.

Congress could improve the ability for SRFs to award funding to small, rural, disadvantaged and underserved communities by including language in an appropriation or authorization act that codifies the concept that states have the authority to establish their own criteria of needed infrastructure projects. The Clean Water Act Section 303(c) (33 U.S.C. 1313 (c)) already allows for states to establish state specific Water Quality Standards. Therefore, Congress has already established that state specific criteria is appropriate.

Funding Gaps

Small, rural, disadvantage and underserved communities often struggle with keeping up with the ever-evolving regulations. Due to lack of historical infrastructure investment, the cost to comply with current standards, and lacking the staff or experience to track the status of future requirements, these systems are spending limited infrastructure funding to meet today's standards rather than being able to plan for the future. Many times, these vulnerable systems will obtain a 20-year loan in order to comply with the current regulatory conditions. When the

[4] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

new standards take effect or when they are required to comply at the next five-year permit renewal cycle, these systems may have many years left on the existing loan, are at their debt limit and cannot obtain grant funding for the needed plant upgrades. There are two potential actions Congress could take to assist communities:

- Extend the National Pollutant Discharge Elimination System permit duration from five years to ten years which could reduce the likelihood of new regulatory compliance limits; and
- Require EPA to consider an approach to Clean Water Act compliance similar to the Safe Drinking Water Act where small systems have delayed or staggered compliance dates or there are different compliance criteria for small systems.

Many municipal wastewater treatment facilities are required to implement a pretreatment program if they treat the industrial wastewater generated by categorical, have an industry that discharges more than 25,000 gallons per day to the municipal treatment system, or contributes more than five percent of a treatment plant's flowrate.[5] The pretreatment facility is typically owned and operated by the industry. EPA has allowed communities to borrow funds from the SRF and make a subsequent loan or grant to the industry. However, these projects are required to have energy efficiencies as part of their design and construction which can increase costs. Small, rural, disadvantaged and underserved communities could benefit if through a Congressional act, Congress:

- Allowed these pretreatment projects to be funded directly to the industry; and
- Encourage but did not require energy efficiency requirements in the projects.

Not only would these program modifications assist with compliance for these small systems and improve environmental protection, but it could also improve the likelihood that an industry could locate or expand in the community which would increase the long-range financial sustainability.

As drought conditions intensify and expand to traditional water rich areas of the country[6], more water supplies and communities are experiencing water shortages. Alternative water sources like municipal wastewater treatment facilities are becoming part of the conversation for securing needed water for the future. Since the EPA does not have regulations for water reuse, SRF funding for these projects are only eligible if the state has reuse regulations. If a state does not have reuse regulations in place, these important projects are not eligible for SRF funding. This is an area that there must be greater focus in the future. Congress could state in any future authorizing bills that water reuse projects are specifically eligible projects.

Additionally, federal infrastructure money funds primarily capital projects and limited planning, monitoring and engineering services. A significant cost for small, rural, disadvantaged and underserved communities is the operation and maintenance of their wastewater treatment facility and associated pipes and pumps. Congress could determine that these costs are eligible for federal funding for communities that meet a prescribed standard.

[5] Introduction to the National Pretreatment Program https://www.epa.gov/sites/default/files/2015-10/documents/pretreatment_program_intro_2011.pdf
[6] https://droughtmonitor.unl.edu/Maps/MapArchive.aspx

Finally, an issue that must be addressed moving forward is the impact of the increasing use of septic systems. Based on the Septic System Trends in Oklahoma report by the Oklahoma State University Extension Service published in June 2023[7], 49% of all newly constructed detached houses in Oklahoma are served by residential septic systems. This increase in septic tank installation at new residential construction can be attributed to the lack of capacity at existing facilities or their inability to fund service line extensions into newly developing areas.

While in many cases a private water well and a private residential wastewater system are good reliable options when public services are unavailable, there are operational challenges and considerations to ensure that the environment and public health are protected. One important use of federal and state infrastructure funding is to provide sewer service where it would otherwise not be available. As we move forward with a spotlight on emerging containments like per- and poly-fluoroalkyl substances (PFAS) and pharmaceutical products, it is important that all levels of government make the most efficient use of our collective fiscal resources to keep these chemicals out of the environment. Congress could identify the replacement of failing septic systems and authorize the payment of connection fees to assist small, rural, disadvantage and underserved communities in eliminating potential contamination sources and generating additional revenue from the new service connections.

Oklahoma's Approach

It is vital to recognize that in funding programs one size does not fit all. Each state must be able to adapt to their specific challenges. In order to best assist communities in obtaining needed funding, Oklahoma created the Funding Agency Coordination Team (FACT) in the early 2000s. The FACT was formed after discussing the frustrations expressed by facilities that every funding agency required different forms and different content in engineering reports. There were engineering services and associated fees for each different application. Additionally, many of the water and wastewater systems facing enforcement actions due to noncompliance did not know about the various funding options available to them. According to a GAO report[8] eight different federal agencies provide infrastructure funding to communities. The Oklahoma FACT is able to provide information on the funding programs. Additionally, the Oklahoma funding agencies and technical assistance providers met and reviewed all preliminary documents, program requirements and created forms to be used by applicants that would meet each agency's individual requirements. All funding agencies met with the Oklahoma FACT and came to an agreement on report contents and requirements. Each quarter facilities are invited to meet with the FACT based on funding needs. All funders from state, tribal, and federal agencies, the Oklahoma Rural Water Association and Oklahoma Municipal League meet with the representatives from water and wastewater systems and their consulting engineers to develop the most beneficial funding options. Without the continued funding from Congress to the federal agencies and the SRFs, Oklahoma FACT could not assist our systems in a manner that is cost

[7] https://extension.okstate.edu/fact-sheets/septic-system-trends-in-oklahoma.html#:~:text=Around%2050%25%20of%20houses%20built,of%20the%20last%20four%20years.

[8] GAO-13-451T

effective and allow communities to move more quickly to correct noncompliance and better protect public health and the environment.

One of the most valuable tools that has been used to fund infrastructure projects is co-funding. Combining the SRF funding with other state, federal and tribal funding can make projects more affordable for small, rural, disadvantaged and underserved communities. In some cases, projects can be broken down into phases to access additional funding. Programs like the Oklahoma Rural Infrastructure Grant (RIG) program can pay for up to $100,000 of a project which can be used as part of the required match for federal loans or grants and pay for items that might not be eligible in a federal program.

An important program that Oklahoma Governor J. Kevin Stitt established is the *Strategic Alliance*. This program established a formal relationship between the state water and wastewater infrastructure agencies, regulatory programs, Oklahoma Rural Water Association and the Oklahoma Municipal League. By meeting regularly, making facility visits and developing tools, the *Strategic Alliance* assists small, rural, disadvantaged and underserved communities improve their operational efficiency, equipment maintenance, and record keeping in order to extend the useful life of their collection, distribution and treatment systems. Additionally, the information gathered on the asset management inventory and system mapping can provide valuable information that helps prepare infrastructure funding applications.

A tool that funding programs have used for many years are the partnerships with other agencies and technical assistance providers. In Oklahoma, contracts with Oklahoma Rural Water Association, Oklahoma State University Extension Service, and consulting firms are utilized to provide hands on assistance to help communities. This assistance ranges from rate studies to work to improve long term sustainable operation, quality training for operators, drought management and other system specific needs. Without the SRFs, this assistance would not be available to small, rural, disadvantaged and underserved communities.

Conclusion

Because of Congress' foresight and fiscal responsibility, the Clean Water SRFs are generating a recurring, renewable source of revenue to meet the never-ending need to repair, rehabilitate and replace aging water infrastructure. As of 2022, loan repayments permanently revolving in the Clean Water SRFs topped $63 billion[9]. This coupled with state programs leveraging the federal funding through the issuance of bonds and partnering with other state and tribal funding programs continue to provide additional needed infrastructure funding. As new regulatory compliance criteria and public health concerns continue to be developed, it is going to take extra efforts by both state and federal governments to ensure that all Americans are protected.

One key water policy point that we should be able to agree is that all levels of government must come together to fund water and wastewater infrastructure. It is necessary to protect public health, the environment, and economic prosperity.

[9] https://docs.house.gov/meetings/PW/PW02/20230928/116310/HHRG-118-PW02-Wstate-JohnsonL-20230928.pdf

Thank you for the opportunity to come before you to participate in this important conversation. I look forward to working with you, the federal agencies, and other stakeholders in a cooperative and collaborative manner as we work toward the same goals of strengthening our vital infrastructure to protect public health and the environment.