Testimony of
Mark Pepper, Executive Director
Wyoming Association of Rural Water Systems
And on behalf of
The National Rural Water Association
Before the
Subcommittee on Fisheries, Water, and Wildlife
Senate Committee on Environment and Public Works
Subject
Water Affordability and Small System Assistance
May 31, 2023

Good afternoon, Chairman Padilla, Ranking Senator Lummis, and Members of the Subcommittee. It is an honor to appear before you today on behalf of small and rural communities like mine. I am Mark Pepper, the Executive Director of the Wyoming Association of Rural Water Systems (WARWS), a nonprofit association representing all small water and wastewater systems in WY. I am also here to testify on behalf of the National Rural Water Association (NRWA), which represents over 31,000 small and rural water systems across the country. Our member utilities have the very important responsibility of complying with all applicable Environmental Protection Agency (EPA) regulations and ensuring the provision of safe drinking water and sanitation services to the public all day, every day.

This Environment and Public Works Committee Subcommittee plays a vital role in shaping water and environmental policies that directly impact America's small and rural communities. The State Revolving Funds (SRF), which provide federal dollars to small towns for building, expanding, and maintaining their drinking water and wastewater infrastructure, were authorized by this committee. We are extremely grateful for the Committee's efforts to include rural America, and the small water systems that serve it, in federal water and environmental policy.

One of the key aspects of our work at Rural Water is to provide direct assistance to small and rural communities in operating, governing, financing, upgrading, and maintaining their water and wastewater infrastructure. This includes ensuring compliance with numerous federal Clean Water and Safe Drinking Water Act regulations and providing training to keep local officials and operators certified and up to date with the latest rules, regulations, and technologies.

Local governments and nonprofit water utilities exist solely to serve the public's interests. They are directly accountable to their local citizens through local elections and are often governed by duly elected volunteer citizens. To provide safe drinking water to the public, local governments must make countless decisions regarding operations, treatment, disinfection, safety, management, financing, distribution, and emergency supply. These decisions require a delicate balance between the public's ability to afford the service and the cost of providing it.

For the next few minutes, I'd like to discuss some of the most important issues facing small water systems right now including Affordability, the Implementation of the Infrastructure Investment and Jobs Act (IIJA), Personnel Challenges, and PFAS Regulatory Burdens.

Affordability

First, the two largest costs of most utilities are personnel costs and energy costs. And compounding these expenses are supply chain issues impacting access to chemicals for water treatment, the replacement/expansion parts and scarcity of qualified professionals like engineers and contractors. Inflationary pressures are also hampering affordability. Energy costs have increased over 30% since 2020 while costs for supplies year over year are up similarly since 2020. This has had a stagnating pressure on personnel costs as operating costs have taken precedence.

The SRF set asides help to fill the technical gap by allowing qualified professionals to provide onsite assistance, comply with the myriad of federal Safe Drinking Water Act and Clean Water Act regulations, as well as access to supply chains and troubleshooting advice which is helping to keep affordability indexes within reason. Should SRF set-asides be reduced or eliminated, I would suspect many systems "affordability index" will turn to "unaffordable" quickly.

NRWA and WARWS supports EPA's SRF water and wastewater programs and technical assistance for small and rural communities within the Safe Drinking Water Act and Clean Water Act regulatory structure. Small and rural communities must have the ability to set affordable water rates to maximize the protection of public health and the environment, while avoiding over-regulation.

IIJA implementation

As for the bipartisan infrastructure bill, rural water systems are grateful to this Committee and Congress for the enactment of this landmark legislation. It is one of the most significant public drinking water and wastewater initiatives this country has ever undertaken. However, we are hearing from a lot of systems and states that the funds provided in the bill have been slow to be implemented due to lack of supplies and engineers to do the work. Last week, Wyoming Department of Environmental Quality announced $140 million in IIJA funding for 97 projects, $51 million was for one wastewater treatment facility for a community of about 9000.

Another quandary in Wyoming is that Operators and Agencies have questions with the definition of “disadvantaged community.” With the bulk of Wyoming’s systems serving under 1,000 people, they are at a socio-economic disadvantage due to size, expertise, workforce, and a limited budget. We believe these communities should qualify as “disadvantaged” under the bill. We also believe an extension of time to get the money out based on the lack of supplies and engineers is warranted. We would also like the state match to remain at 10% for at least 5 years instead of just years 1-2. The 20% match for years 3 and on may make spending difficult in meeting the match requirement.

Workforce

Regarding personnel, the water sector is facing critical staffing shortages, with up to 50% of the workforce expected to retire within the next decade. This trend is already having significant ramifications in rural California and Wyoming. The National Rural Water Apprenticeship Program, created in collaboration with EPA, is an essential tool being used right now in 35 states to address this critical issue. This novel program was specifically designed by industry leaders to attract, train, and retain the next generation water workforce. These strategic partnerships have already created over 600 jobs for the water industry. But far more are needed to meet the expected demand. Our program aims to attract, train, and retain skilled water and wastewater workers to ensure clean and safe water for the public and maintain the water infrastructure necessary for rural service areas' economic viability. We just kicked this program off in Wyoming, and interest is steadily growing in rural and tribal communities for our next enrollment period beginning in October 2023.

PFAS Regulatory Burdens

NRWA and WARWS shares the Committee's goal of eliminating PFAS from the public's drinking water and environment. However, the looming threat of EPA’s proposed PFAS MCLs, and the liability costs associated with having certain PFAS compounds designated under CERCLA could price small water utilities out of existence. Given the cost of testing for PFAS and treatment, the disposal costs if designated under CERCLA will further add to financial instability or insolvency.

Which is why we are extremely grateful and express our strong support for S. 1430 the “Water Systems PFAS Liability Protection Act” legislation introduced by Ranking Senator Lummis. The bill will preserve a fundamental element of environmental law which is the important “polluter pays” principle for cleanups of PFAS designated under CERCLA.

Small and rural communities that rely on traditional revenue models such as agriculture, extractive minerals or tourism are not responsible for introducing PFAS into the environment or public drinking water. Extending CERCLA liability to small and rural communities that are not responsible for PFAS contamination will have unintended consequences, penalizing these communities. Economically disadvantaged

communities in Wyoming with a decline in agriculture production or an exodus of the extractive minerals industry, already hampered by inflationary factors, will be particularly affected by the financial burden of CERCLA liability.

Finally, access to certified labs and Subtitle C disposal facilities and the associated costs will further put strain on very thin operating margins. The closest approved disposal site for Wyoming is in Salt Lake City, which depending on where you are in Wyoming could be anywhere from 3 hours transport to 12-15 hours.

In closing, Mr. Chairman, small and rural communities thank you for the opportunity to testify before the Subcommittee today, express our thoughts, reservations and acknowledge the numerous opportunities this committee has provided rural America in the crafting of federal water and environmental legislation.

Additional comments for the record:

Small and rural communities have the very important public responsibility of complying with all applicable federal Safe Drinking Water Act and Clean Water Act regulations and for supplying the public with safe drinking water and sanitation every second of every day. Over 91% of the approximately 50,000 community water systems serve fewer than 10,000 persons and 81% serve fewer than 3,300 persons. Small and rural communities often have difficulty complying with complicated federal mandates and providing safe/affordable drinking water and sanitation due to limited economies of scale and lack of technical expertise. This difficulty is eased due to ongoing and continuing support offered through rural water training and technical assistance programs.

The affordability of water service is a critical issue for all communities, but it has a disproportionate impact on small and rural water and wastewater systems. Affordability is a fundamental factor that affects every aspect of a water system's ability to operate. However, it is small and rural water systems that bear the brunt of this challenge, as they already face funding limitations and operate on thin profit margins.

Rural communities face multiple challenges in achieving water service affordability. Factors such as high water rates, limited funding, aging infrastructure, low population density, and the lack of economies of scale contribute to this complex issue. Moreover, supply cost inflation further exacerbates this challenge, leading to operational expense increases that are ultimately passed on to ratepayers.

The financial viability of a water system is intrinsically tied to rate payments, making affordability and financial sustainability inseparable. To address these challenges, a holistic approach is needed which includes federal resources in the form of technical assistance and targeted funding, like the technical assistance set-asides in the Environmental Protection Agency's (EPA) State Revolving Funds (SRF), to ensure affordable rates.

Approximately 72% of clean water SRF funding is awarded to large communities (EPA's Clean Water State Revolving Fund Annual Review) and approximately 71% of drinking

water SRF funding is awarded to large communities (EPA's Drinking Water State Revolving Fund National Information Management System). Within the SRF framework, the EPA subsidization options, including principal forgiveness, negative interest loans, grants, or a combination thereof, are of utmost importance. These measures help alleviate the burden on small and rural water systems to keep service affordable and communities economically viable.

National Rural Water Association (NRWA) and Wyoming Association of Rural Water Systems (WARWS) fully support EPA's SRF water and wastewater programs, as well as the provision of technical assistance to small and rural communities within the regulatory structure of the Safe Drinking Water Act and Clean Water Act. It is essential to empower small and rural communities to set affordable water rates, ensuring the protection of public health and the environment while avoiding unnecessary over-regulation.

Another daunting challenge currently facing the water sector is that up to 50% of the workforce is expected to retire within the next decade. This trend is already having significant ramifications, especially in rural Wyoming.

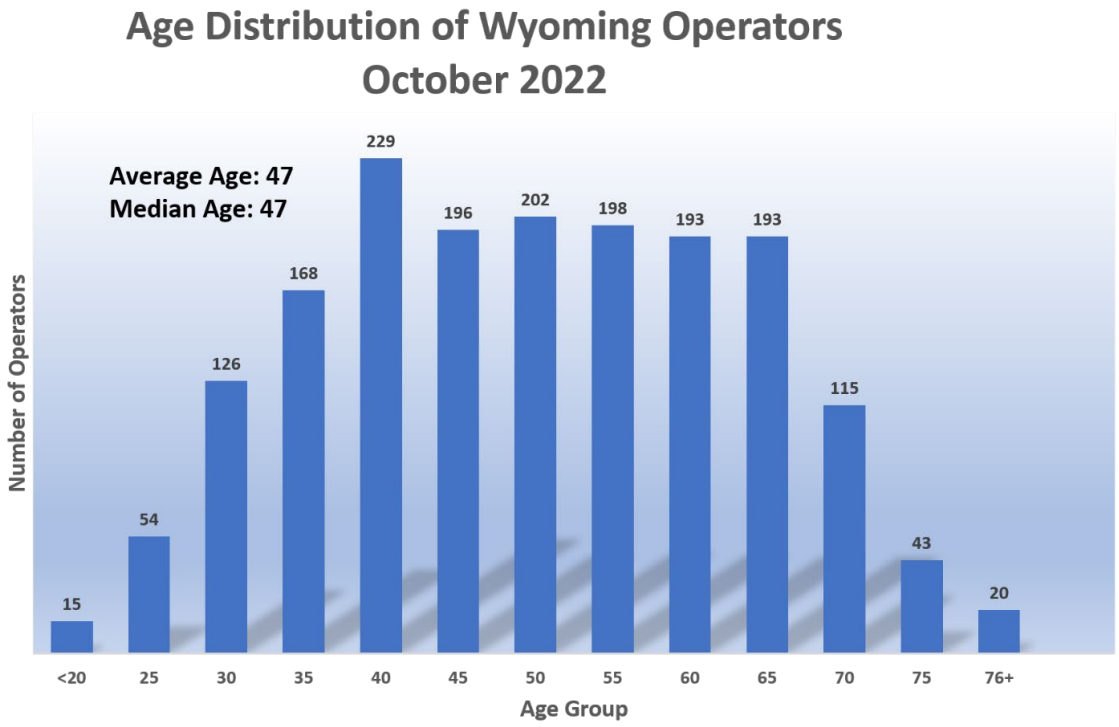
To address this critical issue, the National Rural Water Apprenticeship Program was created in collaboration with the EPA. This program, currently implemented in 35 states, is an essential tool being used to attract, train, and retain the next generation water workforce. Designed by industry leaders, this novel program aims to fill the growing workforce gap in the water and wastewater sector. Through strategic partnerships, over 600 jobs have already been created in the water industry by this revolutionary program. However, much more is needed to meet the expected demand.

The National Rural Water Apprenticeship Program focuses on attracting, training, and retaining skilled water and wastewater workers. Its goal is to ensure clean and safe water for the public and maintain the water infrastructure necessary for the economic viability of rural service areas. In California and Wyoming, rural and small community water systems have struggled to attract and retain the next generation of workforce due to various factors, including the lack of an identifiable career path, low salary levels, and low population density.

To address this urgent need, Wyoming Rural Water has taken proactive measures by partnering with the National Rural Water Association and Wyoming's Department of Labor to initiate the Water and Wastewater Systems Operators Apprenticeship Program. This program provides a systematic apprenticeship model that combines on-the-job training, formal classroom instruction, and guidance from WARWS subject matter experts. The WARWS Apprenticeship Program offers several benefits, including expanding job opportunities in rural Wyoming, establishing a systematic training method for water and wastewater utilities, improving workforce participation and retention in small communities, and protecting the federal investment in critical infrastructure.

To encourage young people to pursue careers in water utility operations, Rural Water Associations across the country have developed crucial partnerships with educational institutions such as high schools, community colleges, and vocational training schools. These partnerships are raising awareness about the stable and rewarding nature of careers in the water industry.

By addressing the workforce shortage and providing critical technical assistance, small communities can assure access to quality water and maintain compliance with the myriad of federal water regulations. This, in turn, will help them avoid fines, maintain drinking water and wastewater service, and preserve this modern, basic civic necessity. The value proposition of the Rural Water Apprenticeship initiative is to overcome the water industry workforce challenge, enhance water and wastewater quality in small communities and ensure safe and reliable water services for generations to come.



Finally, regarding PFAS contamination, NRWA and WARWS want to emphasize the significant financial burden that testing and treatment costs already place on our communities. If PFAS is designated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the disposal costs associated with PFAS would further exacerbate financial instability and potentially lead to insolvency. This burden cannot be overlooked, and equitable solutions must be identified.

NRWA and WARWS also want to express our strong support for the "Water Systems PFAS Liability Protection Act" legislation, S 1430, introduced by Ranking Senator Lummis. This legislation aligns with the goal shared by small and rural communities

across the country to eliminate PFAS from the public's drinking water and environment while preserving the essential "polluter pays" principle for cleanups under CERCLA.

It is crucial to recognize that small and rural communities are not responsible for introducing PFAS into the environment or public drinking water. Extending CERCLA liability to these communities, which are innocent bystanders of PFAS contamination, would have unintended consequences and unjustly penalize them. This approach would disproportionately impact economically disadvantaged communities and populations with limited resources, further exacerbating financial burdens.

Instead, it is imperative to hold responsible parties accountable for the remediation, treatment, and provision of alternative sources of safe drinking water for the affected communities. They should bear the responsibility for the consequences of their actions, rather than shifting the burden onto innocent parties.

Our members and affected communities need assistance in various forms, including funding for treatment, monitoring, on-site technical assistance for immediate response, credible public health information, emergency access to safe drinking water, and compensation from the responsible parties.

The EPA’s focus on reporting costs vastly underestimates the overall expenses incurred by water systems. These include biosolids management, disposal of PFAS-laden media, legal fees, fines, and potential cleanup costs, which water systems cannot absorb.

Public drinking water systems could face an estimated $52 billion in treatment costs for managing PFAS-laden media alone. Biosolids management costs have already increased by approximately 37% due to PFAS concerns. In Maine, biosolids disposal costs have increased by an average of 170%, reaching up to 455% in some cases. The designation of PFAS as a hazardous substance under CERCLA could result in a 27-fold increase in annual disposal costs for water treatment residuals nationally, exceeding $3.7 billion per year. Transporting residuals to hazardous waste facilities would require significantly longer distances, increasing costs. Additionally, installing PFAS-specific GAC treatment for a public water system serving about 10,000 people in New Jersey is estimated to range from $500,000 to $1,000,000, with operating costs of approximately $80,000 per year. (Water Coalition Against PFAS Talking Points, attached)

In conclusion, the financial implications of PFAS contamination cannot be underestimated. It is imperative to differentiate between responsible parties and innocent communities. NRWA and WARWS ask this Committee to enact legislation that provides necessary assistance to affected communities, protects small and rural water systems from liability, and ensures that the "polluter pays" principle is upheld.

April XX, 2023

The Honorable Cynthia Lummis
United States Senate
Washington, DC 20510

Dear Senator Lummis,

The Water Coalition Against PFAS writes to express our strong support for the "Water Systems PFAS Liability Protection Act," legislation that will preserve the important "polluter pays" principle for cleanups of Per- and Polyfluorinated Substances (PFAS) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Last year, EPA formally announced plans to designate two of the most common PFAS – Perfluorooctanoic acid (PFOA) and Perfluorooctanesulfonic acid (PFOS) – as hazardous substances under CERCLA. While EPA has stated that this action will help ensure that manufacturers and users of these chemicals are held responsible for the cost of remediating contaminated sites, without congressional action drinking water and clean water utility customers—the same American public that was unwittingly exposed to these chemicals now contaminating their water supplies—will also be at risk of incurring the significant cost of cleaning up sites that are tainted with these chemicals.

This is because drinking water and clean water systems are innocent receivers of PFAS contamination from upstream polluting industries and PFAS-laden products. This causes the water system to possess residuals that contain those PFAS, which are disposed of in accordance with applicable law. However, should disposal be to a landfill or other facility that ever became a Superfund site, then the water system could be treated as a PFAS polluter — and be responsible for a portion or even all of the cleanup costs — forcing local ratepayers to cover the cleanup bill after they already paid to remove the contaminants from their source water. This challenge will become even more acute as EPA has proposed a National Primary Drinking Water Regulation for six different PFAS – which if finalized will require communities to remove these substances through treatment processes that will capture and concentrate PFAS in filtration media.

Wastewater and stormwater utilities would face similar liability through no fault of their own because they either receive PFAS chemicals through the raw influent that arrives at the treatment plant or through the municipal stormwater runoff that they manage. These flows can come from domestic, industrial, and commercial sources and may contain PFAS constituents ranging from trace to higher concentrations, depending on the nature of the dischargers to the sewer or stormwater system. These flows are not generated by the utility; rather, the utility provides the critical human health and environmental service of managing and treating this influent to meet all the requirements of the Clean Water Act. Congressional action is necessary to distinguish these utilities from the entities responsible for introducing PFAS into the environment.

We appreciate that EPA is pursuing an "enforcement discretion" policy that intends to concentrate the Agency's CERCLA enforcement activities related to PFAS on the polluters that have long profited from PFAS and are responsible for the contamination these chemicals have caused. However, any such policy will be wholly insufficient to ensure that drinking water and clean water utility customers will not be faced with potentially catastrophic CERCLA legal defense costs and cleanup liability for PFAS.

Not only could such a policy easily be changed by future administrations, but, more pressingly, industry has already publicly indicated that it will use every legal means available to it to require public agencies to pay for PFAS cleanups. As they have done countless times in the past, corporate polluters will use the extensive means provided to them by CERCLA to defray the costs of the pollution they created directly onto the backs of the communities they have harmed by dragging public agencies into CERCLA litigation. And, unfortunately, these communities are often those that have been the most overburdened with pollution and are therefore the least able to afford such costs. As well-intentioned as EPA is, the Agency simply cannot legally stop this from happening.

Passage of the "Water Systems PFAS Liability Protection Act" is therefore necessary to guarantee drinking water, wastewater and stormwater system ratepayers are entirely protected from incurring the likely billions of dollars of costs of cleaning up environmental PFAS pollution caused by others.

As the Senate debates this issue in the coming months, we will be eager to work with you on any necessary revisions to the scope of the bill, such as to ensure that the bill's definition of covered PFAS fully captures all PFAS that EPA may choose to designate as hazardous substances under CERCLA.

Removing harmful chemicals like PFAS from drinking water, wastewater and stormwater is central to the public health and environmental protection mission of our members. The "Water Systems PFAS Liability Protection Act" will support this mission of supporting clean and safe water while ensuring that water system ratepayers are not burdened by unwarranted liability through a misapplication of CERCLA's "polluter pays" principle. We support this legislation, and we thank you for your leadership on this important issue.

Sincerely,

American Water Works Association
Association of Metropolitan Water Agencies
National Association of Clean Water Agencies
National Rural Water Association
Water Environment Federation

RE: Water Coalition Against PFAS Talking Points

Cost-Specific Talking Points

- Public drinking water systems could incur $52 billion in treatment costs associated with management of PFAS-laden media *(Black & Veatch, page 6)*.
- In a study of 29 solids management facilities conducted in 2020, average biosolids management cost increased by approximately 37% in response to PFAS concerns. Notably, these cost spikes to public utilities were incurred prior to newer policies and regulations taking effect over the last two years – these impacts are anticipated to only grow. (*NACWA/NEBRA/WEF 2020 study, page ES-2*).
- In Maine, biosolids disposal costs have seen an increase of anywhere from 37% to 455%, with the latter resulting in a jump from roughly $74M to $410M. Ultimately, based on reported data from a number of utilities, biosolids disposal costs are increasing or have increased by an average of 170%, and this data does not even reflect all costs associated with biosolids management changes when PFAS screening levels were initially adopted.
- The designation of PFAS as a hazardous substance under CERCLA could result nationally in a 27-fold increase in annual disposal costs for water treatment residuals, from $138 million per year to over $3.7 billion per year *(Hazen & Sawyer, page 7)*.
    - Other costs include the handling charges for hazardous waste generators and per mile surcharges for transport based on the quantity of hazardous waste generated.
    - Transportation of residuals to hazardous waste facilities require much farther travel distances relative to a non-hazardous disposal site. On average, the transport distance increases from 10 to 200 miles.
- New Jersey estimates the cost of installing PFAS-specific GAC treatment for a PWS serving about 10,000 people ranges from $500,000 to $1,000,000, with estimated operating costs of approximately $80,000 per year" (Environmental Council of the States).
- Cost of non-hazardous disposal in a Subtitle D municipal landfill: $64.41/ton *(Hazen & Sawyer) (Page 6)* (Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances)
- Cost of hazardous disposal: The EPA unit cost for Hazardous Waste Incineration from the 2020 Interim PFAS Destruction and Disposal Guidance was used at $1,738/ton *(Hazen & Sawyer) (Page 6)*.
- EPA's Drinking Water Treatment Technology Unit Cost Models has a report on 'Reverse Osmosis/Nanofiltration Drinking Water Treatment' (which includes membrane treatment).