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H.R. 2771, TO AMEND THE SAFE DRINKING WATER ACT TO REAUTHORIZE THE NEW YORK CITY WATERSHED PROTECTION PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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H.R. 2771, TO AMEND THE SAFE DRINKING WATER ACT TO REAUTHORIZE THE NEW YORK CITY WATERSHED PROTECTION PROGRAM

FRIDAY, APRIL 2, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON ENVIRONMENT AND
HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 2123, Rayburn House Office Building, Hon. Paul E. Gillmor (chairman) presiding.

Members present: Representatives Gillmor, Fossella, Buyer, Pitts, Bono, Terry, Rogers, Issa, Otter, Sullivan, Barton (ex officio), Solis, Pallone, Wynn, Capps, Schakowsky, Gonzalez, Rush, Stupak, and Green.

Staff present: Jim Barnette, general counsel; Mark Menezes, majority counsel; Jerry Couri, policy coordinator; Bob Meyers, majority counsel; Robert Simison, chief clerk; William Carty, legislative clerk; Billy Harvard, legislative clerk; Michael Abraham, legislative clerk; Richard Frandsen, minority counsel; and Sharon Davis, minority clerk.

Mr. GILLMOR. The subcommittee will now come to order. Today our committee will be addressing legislation to reauthorize the New York City Watershed Protection Program within the Safe Drinking Water Act. This is bipartisan legislation, 28 co-sponsors including Mr. Fossella, our subcommittee vice chairman, and Mr. Towns and Mr. Engel, both members of our full committee.

The New York City watershed covers an area of almost 1,900 square miles in the Catskill Mountains and the Hudson River Valley. The watershed is divided into two reservoir systems, the Catskill/Delaware watershed and the Croton watershed. Together these two reservoir systems deliver approximately 1.4 billion gallons of water each day to nearly 9 million people to metropolitan New York City. In December 1993, the EPA concluded that New York City was able to avoid filtration of its drinking water and assigned New York over 150 conditions relating to watershed protection monitoring and studies.

Unfortunately, New York City met several key roadblocks to implementation of these requirements, including being able to obtain either a land acquisition permit or approval of revised watershed regulations from the State of New York. Congress addressed this

matter in section 128 of the Safe Drinking Water Amendments of 1996 when the New York City Watershed Protection Program was first enacted. This program authorized $15 million per year from fiscal years 1997 to 2003, for EPA to provide 50 percent matching grants to the State of New York for approved demonstration grants projects that were part of New York's Watershed and Source Water Protection Program.

In practice, this has been a successful program. It has saved the economic viability and the environmental quality of upstate New York communities in the watershed region, while also saving American taxpayers millions of dollars that would otherwise be necessary to build water filtration systems.

Of note, EPA Administrator Levitt testified last week that one way to reduce the financial needs of drinking water delivery systems is to encourage more conservation efforts, and I believe programs like the New York City watershed are good examples of public and private partnerships paying environmental and economic dividends.

Our subcommittee faces a simple question: Should we as Congress provide legal authority for the Federal Government to assist this watershed? I believe we should support H.R. 2771. It is a simple bill that extends authorization of the New York City watershed until 2010. Let us take a step forward toward bipartisan protection of the environment in general and New York's source water in particular, and I would urge all members to vote favorably on recommending this bill to the full committee.

Before closing my remarks and recognizing the gentlewoman from California for the purpose of an opening statement so we can go to the first panel of our distinguished colleagues, let me speak briefly about future activities for our subcommittee. I continue to look for places where our committee has both institutional reasons to get involved and a majority of our members supporting a particular decision. Today I am noticing a joint hearing for April 21 on the Defense Department's proposals impacting Superfund, RCRA, and the Safe Drinking Water Act.

This spring I also hope to engage in oversight of our Nation's brownfields law and the financial needs of the Drinking Water State Revolving Fund as well as our Nation's bioterrorism laws as they relate to drinking water. There may be other items; but time, resources, and abilities for success will guide those decisions.

At this time I would like to recognize the ranking member of our subcommittee, Ms. Solis from California.

Ms. SOLIS. Mr. Chairman, just a point of clarification. Is it my understanding that my colleagues will have an opportunity to make an opening statement before we hear the first panel?

Mr. GILLMOR. Yes.

Ms. SOLIS. Thank you. With that, I want to say thank you and welcome to the witnesses here.

I have to tell you that I am very surprised that after going almost nearly 9 months without a hearing in the subcommittee, that the program we will discuss today is the reauthorization of the New York City Watershed Protection Program. With the more than 13 other core programs of the Safe Drinking Water Act that expired in 2003, programs like the State Revolving Loan Fund that

pays for upgrades in our Nation's severely deteriorated water infrastructure, I have to say I am baffled as to why this subcommittee has chosen this program above all others to reauthorize.

Certainly I am not opposed to the demonstration projects for monitoring New York's watershed. In fact, I am a proponent of that. I think that is something that is very, very important.

It seems odd to me that we take this opportunity when there is so much that can be addressed in the Safe Drinking Water Act itself. The subcommittee picked out of the 7-year reauthorization, a small demonstration program that neither President Bush nor President Clinton ever requested funding for in any of their budget proposals. So let us be clear: The funding for the program is certainly not in jeopardy. Last year it received $5 million from the Committee on Appropriations, so I am wondering why the subcommittee is not holding a hearing about programs that are truly in jeopardy.

The reauthorization of the State Revolving Loan Fund, which funds critical water infrastructure and compliance needs throughout the country, expired in 2003. President Bush's budget requested only $850 million for that program, $150 million less than the authorized level. And the EPA itself says that $102 billion in additional funding for water utilities just to maintain compliance with the Safe Drinking Water Act still is not authorized.

Every Democrat on this subcommittee, Mr. Chairman, sent a letter to you in February asking for a hearing on the President's proposed EPA budget so we can fulfill our congressional oversight responsibility of this subcommittee. We have not received a response and I am not aware of any hearing that is planned.

Every day we open the newspaper, in fact today in the Washington Post there is another article about the problems here in Washington, DC. With lead—lead being found in our drinking water here. The matter calls out for corrective legislation and is squarely within the jurisdiction of this subcommittee.

There is bipartisan legislation also pending in the Congress that would create an ombudsman at EPA to help local communities work with the Federal Government when they face environmental problems, but this subcommittee is not holding a hearing on that legislation.

So here we are, taking on one provision out of the entire Safe Drinking Water Act, and holding a hearing. And I think an important topic of discussion today would be to find out why the Bush administration has declined to request funding for this particular project. We have asked the majority to provide a witness who could knowledgeably answer the question. I hope we can hear from someone today.

In summary, I wish to reiterate my concerns with the decision to focus today's hearing on this very small provision and ignore the pressing safe drinking water needs facing the entire country.

I yield back the balance of my time.

Mr. GILLMOR. Let me respond briefly to a couple of points to the gentlewoman. We have had three Cabinet secretaries in, testifying before the Committee on the Budget. And, I also point out, regarding the lead in the drinking water, I have sent letters to EPA, the General Accounting Office and to DC. To begin the process of look-

ing at that. We have been contacted by GAO. They are starting that, and when we get answers from them, then we will be in a position to have the information to decide how to proceed.

The gentleman from New York, Mr. Fossella, vice chairman of the subcommittee is recognized.

Mr. FOSSELLA. Mr. Chairman, thank you for holding this hearing and markup on this bipartisan bill.

Let me note, to underscore the bipartisan nature of this bill, that every member of the New York State delegation, Democrats and Republicans, are co-sponsors. I think that indicates not just the importance of it to New York State and the country, but the strong popularity on both sides of the aisle. And obviously we are here to reauthorize the New York Watershed Protection Program. And I want to thank the witnesses, my colleagues Mr. Towns and Mrs. Kelly, for coming forward, as well as the witnesses that will come after.

Passing this bill will ensure the continued protection of our Nation's largest and most pure source of drinking water. The hearing and markup represents a major step forward in keeping the health of millions of New Yorkers safer for years to come. Along with your recent announcement about the subcommittee's investigation into lead in Washington, DC's water supply, your willingness to move this important piece of legislation is just another example of your commitment toward improving drinking water quality nationwide. I cannot thank you enough for these efforts and I believe the people of New York will say the same.

"The best way to assure the public of safe, healthy water is to protect the water at its source." These are the words of the Croton Watershed Clean Water Coalition President, Marian Rose. The statement is also the definitive purpose of the New York Watershed Protection Program. With a relatively small amount of Federal funding, New York City and State have been able to implement an unprecedented water monitoring and surveillance program for the 1,900 square mile New York City watershed region. This is the Nation's largest source of unfiltered drinking water. It is an area providing pristine water to 9 million residents in both New York City and upstate communities, representing over half the State's population.

The landmark program is all made possible through the New York City Watershed Agreement; the historic accord resulting from the efforts of Governor George Pataki and his vision of bringing together environmental groups, New York city officials, upstate communities, and the United States Environmental Protection Agency in 1997. It allowed for the continued and long-term protection of New York City's drinking water, while safeguarding the economic viability and environmental quality of upstate communities in the watershed region. Note that the agreement also saves Federal and State taxpayers $8 billion that would be necessary to build water filtration systems in its absence.

Congress recognized the need to fund the New York City Watershed Protection Program in the 1996 Safe Drinking Water Act Amendments. Since then, the watershed agreement has made unprecedented advances toward enhancing water quality in both New York and our country. The $15 million in Federal money author-

ized annually provides the seed money for groundbreaking programs and studies. These efforts can be used as a nationwide model to improve drinking water for all Americans.

Some of the program's innovations improve breakthrough discoveries on the impacts of land use on drinking water, details on the effects of trace organics and metals, toxins, pesticides and nutrients in watersheds, and recognition of best management practices for storm water runoff. Other efforts include extensive education campaigns and public training on monitoring streams supplying drinking water.

Building on this small base of Federal funding, the city and State of New York have shown a strong commitment toward implementation of the watershed agreement. To date, both have spent $1.6 billion on watershed programs. Unfortunately, authorization for Federal funding of the agreement expired September 30 of last year, leaving its future in jeopardy.

H.R. 2771 solves this problem. By reauthorizing the program through 2010, enhancing the protection of New York City's water supply will continue, along with the development of watershed protection models benefiting all Americans. The goal is achieved without displacing upstate farmers and uprooting historic landmarks, scenarios that could be necessary if the program is replaced with filtration systems, not to mention, as I said, the $8 billion price tag.

I ask my colleagues to protect New York City's drinking water, protect the watershed agreement's breakthough innovations, protect upstate farmers and communities. Pass H.R. 2771.

Let me also, Mr. Chairman, with unanimous consent submit for the record letters of support from environmental groups, many of the upstate towns and other officials in support of this program. And I take this time to thank the Commissioner, representing Governor Pataki, of the Department of Environmental Conservation, Erin Crotty, for coming down as well. I yield back.

Mr. GILLMOR. Without objection they will be entered in the record. Hearing none, it will be so ordered.

[The information follows:]

March 29, 2004

Honorable Paul E. Gillmor, *Chairman*
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

DEAR CONGRESSMAN GILLMOR: I am writing to express the strong support of Riverkeeper for H.R. 2771, introduced by Congressman Vito Fossella and 22 other members of the New York State House Delegation. This legislation will ensure the continuation of the monitoring and surveillance program currently under the jurisdiction of the United States Environmental Protection Agency (USEPA), which is necessary to ensure the continued protection of New York City's drinking water supply.

In 1997, New York State, New York City, USEPA, upstate communities and environmental organizations including Riverkeeper joined together to sign an agreement to protect the unfiltered drinking water supply used by the nine million residents of New York City and upstate communities. This unfiltered drinking water supply is continuously threatened by the increasing numbers of people and associated development which have been drawn to the scenic and historic Catskill Mountain region, where the West of Hudson portion of the 2,000 square mile drinking water system is located. Since aggressive actions were taken to preserve the natural filtering of this water supply, to date water filtration has not been necessary for the Catskill

and Delaware Watershed; filtration that would cost an estimated $8 billion. This action, while costly to the water consumers, also would not have helped to preserve the bucolic character of the Catskills. The historic and landmark 1997 Watershed agreement, bringing with it open space conservation and stronger land use controls, was both cost effective and environmentally protective. We believe that, if implemented effectively, this agreement is the best means to preserve the water supply, the upstate economy, and the environment of the Catskills. The many innovations stemming from the New York City watershed program are unquestionably beneficial on a national basis as well.

Language was included in the Safe Drinking Water Act Amendments of 1996 (P.L. 104-182) which authorized the United States Congress to provide USEPA with up to $15 million annually for seven years "for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system . . ." As a result of this authorization, a total of $31 million has been provided and matched equally by recipients, for projects that have, among other programs:

- Evaluated the impacts of land use on the drinking water supply;
- Monitored nonpoint source pollution that could impact on the water supply, so that it can be addressed effectively;
- Assessed the effects of trace organics and metals, toxics, pesticides and nutrients in the watershed;
- Demonstrated which best management options were the most effective at reducing phosphorus loading in runoff and storm water;
- Developed three-dimensional models of the Total Daily Loads to the water supply;
- Created an integrated, watershed-wide monitoring program to address source and ecosystem impairments;
- Mapped wetlands for potential acquisition; and
- Conducted extensive public education and outreach.

Congressional authorization for these initiatives has expired, but the need for them has not. Through the efforts described above, as well as other initiatives, we are enhancing the protection of New York City's water supply while developing models of watershed protection that can easily be translated to other regions of the country. Accordingly, I am calling on you to reauthorize the SDWA program to allocate federal funds to the protection of New York City's watershed through the swift approval of H.R. 2771. The funds provided to date unquestionably have been an excellent investment in this unique unfiltered drinking water supply, and the continuation of this program is critical to providing these continued benefits, both to New York City and the Nation.

I would be happy to discuss this issue with you or your staff. Please feel free to call me at 914-422-4343. Thank you in advance for your support of H.R. 2771.

Sincerely,

ROBERT F. KENNEDY, JR.
Chief Prosecuting Attorney

March 31, 2004

The Honorable Paul E. Gillmor, *Chairman*
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

DEAR CONGRESSMAN GILLMOR, I am writing to express my strong support for H.R. 2771, introduced by Congressman Vito Fossella and 22 other members of the New York State House Delegation. This legislation will ensure the continuation of the monitoring and surveillance program currently under the jurisdiction of the United States Environmental Protection Agency (USEPA), which is necessary to ensure the continued protection of New York City's drinking water supply.

In 1997, New York State, New York City, USEPA, upstate communities and environmental organizations joined together to sign the historic Watershed Agreement to protect the unfiltered drinking water supply used by the nine million residents of New York City and upstate communities. This unfiltered drinking water supply is threatened by the increasing development in New York City's 2000 square-mile watershed that is situated both east and west of the Hudson.

Since aggressive actions were taken to preserve and protect the natural filtering capabilities of this water supply, to date a chemical treatment/filtration plant has not been necessary for the Catskill and Delaware Watershed. Although a $1.5 bil-

lion chemical treatment/filtration filtration plant has been ordered for the City's Croton System, this does not preclude the need for an equally strong protection program for the Croton Watershed. Indeed, the country's top experts in the field of water treatment will tell you that no modern plant is able to remove the multitude of pollutants that access the reservoirs from excessive development. The best way to assure the public of safe, healthy water is to protect the water at its source.

Language was included in the Safe Drinking Water Act Amendments of 1996 (P.L. 104-182), which authorized the United States Congress to provide USEPA with up to $15 million annually for seven years "for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system . . ." As a result of this authorization, a total of $31 million has been provided and matched equally by recipients, for projects that have, among other programs:

- Evaluated the impacts of land use on the drinking water supply;
- Monitored nonpoint source pollution that could impact on the water supply, so that it can be addressed effectively;
- Assessed the effects of trace organics and metals, toxics, pesticides and nutrients in the watershed;
- Demonstrated which best management options were the most effective at reducing phosphorus loading in runoff and storm water;
- Developed three-dimensional models of the Total Maximum Daily Loads to the water supply;
- Created an integrated, watershed-wide monitoring program to address source and ecosystem impairments;
- Mapped wetlands for potential acquisition; and
- Conducted extensive public education and outreach.

Unfortunately, Congressional authorization for these initiatives has expired, but the need for them is greater than ever. From a personal point of view, I, together with my group (Croton Watershed Clean Water Coalition, Inc.), have greatly benefited from DEC's invaluable program through which they train volunteers on how to monitor streams and to produce scientifically acceptable reports on the quality of their waters. What we learned from this program cannot be measured in terms of the funds invested. It helped us understand the intricate system that protects the health of our streams, the reservoirs into which they flow and, ultimately our own health. We are deeply grateful to DEC, as I am sure many others are, for the time they spent in training us and for the generous use of their equipment. None of this would have been possible without the funds allocated by the USEPA. Those funds were put to good use.

We urge you to support of H.R. 2771.

Sincerely,

MARIAN H. ROSE, *Ph.D.*

Mr. GILLMOR. The gentleman from New Jersey.

Mr. PALLONE. Mr. Chairman, I would like to reinforce the issues raised by our ranking member, the gentlewoman from California. I am deeply disappointed with the lack of activity scheduled by the majority for this subcommittee, and furthermore the fact that when we are called to meet, we are discussing an issue that has such a small scope. While I do not oppose the particular project this bill addresses, I am very disturbed by the fact that the majority has placed this bill at the higher majority of the myriad of other important environmental issues that need our attention. The bill addressing drinking water concerns deals with only one regional area of the country.

I would note that neither the Clinton nor Bush administration has ever requested funding for this program in their respective budget requests, yet New York has never been denied funding of this project by congressional appropriators. This is the first meeting of this subcommittee this session. In fact, this is the first time that this subcommittee has met in more than a year, and to authorize one section of the Safe Drinking Water Act at a time when the other 13 provisions in the Safe Drinking Water Act need to be reauthorized.

Nearly 2 years ago, the subcommittee held oversight hearings on the state of drinking water needs and water infrastructure. We learned that communities across America are struggling with decaying and inadequate drinking water infrastructure and that capital costs alone will exceed $480 billion over the next 20 years.

This subcommittee could be meeting to help these communities by working to extend and expand the Drinking Water State Revolving Loan Fund. This fund expired last year in President Bush's fiscal year 2005 budget request. Only $850 million toward the $102.3 billion additional funding needs for water utilities just to maintain compliance with the Safe Drinking Water Act, and this does not address replacing critical safe drinking water infrastructure.

The subcommittee could also be meeting to fulfill its oversight responsibilities to examine President Bush's fiscal year 2005 budget request. Why hasn't the EPA Administrator, Mike Levitt, been in here to talk about the budget? It is amazing to me. I am disappointed with the majority's decision with regard to this subcommittee's activity. I can only hope that the majority is going to start doing something. I know that the chairman mentioned a couple of oversight hearings that he says he is now going to have. I hope they are held and they do not get canceled. Think about all the bills that need to be reauthorized: TSCA, RCRA, the Safe Drinking Water Act, or the Superfund. All of these have expired.

You talk about in DC. We have a major lead problem with drinking water. The Committee on Government Reform has already had a hearing on this issue. We have not had anything. The same thing happened when I was the ranking member in the previous session, Mr. Chairman. We rarely met. We rarely did any oversight.

When the Democrats were in the majority—and I have been here a few years so I remember—this was one of the most active committees. This is one of the reasons that I wanted to be on the full Commerce Committee, because of this subcommittee. But i just feel the majority is basically trying to hide the administration's record on environmental issues. Maybe that is why we never meet, because they do not want to dig into the fact that the administration is basically trying to destroy the environment. I do not know what other reason there is. But it has got to stop. Otherwise we have to keep raising this issue and not just have these hearings once every year.

Thank you, Mr. Chairman.

Mr. GILLMOR. The gentleman from Indiana.

Mr. BUYER. I was just so humored by the last statement, I just have no words to follow it.

Mr. GILLMOR. The gentleman yields back.

Mr. GREEN. Can the gentleman turn his mike on so we can hear?

Mr. BUYER. I said it is not worth responding to that, is what I meant, Mr. Green.

Mr. GILLMOR. The gentlewoman from California.

Ms. CAPPS. Thank you, Mr. Chairman and welcome to our witnesses, our colleagues, Congresswoman Kelly and Congressman Towns.

I appreciate your convening this hearing and markup on legislation to reauthorize New York City's Watershed Protection Program. First I will add that I also support the goal of this program. Ensur-

ing safe drinking water is just about the most basic service the government does. The protection of public health and safety and the future of this watershed are of vital importance to the residents of New York, and there are quite a few of them. But every watershed is unique, with its own conditions, benefits, challenges and stakeholders. I hope today's hearing will be helpful in shedding light on what has been accomplished and if any further action on our part is needed.

The legislation before us will reauthorize just one section of the Safe Drinking Water Act that expired in 2003, so I am hopeful that it is an indication that this subcommittee will also consider the 13 other important provisions of the act whose authorizations also expired in 2003. There are, of course, many significant issues relating to the act deserving of the subcommittee's attention; for example, the subcommittee should be taking action to ensure EPA sets a drinking water standard for perchlorate. I am very disappointed the subcommittee charged with protecting environmental health and safety has not yet discussed this increasingly prevalent and dangerous issues. There is a strong and growing body of evidence that perchlorate has become a serious concern to groundwater supplies, especially at and around military installations. In my congressional district and across America. We are witnessing the emergence of this dangerous contaminant. To date, EPA has reports of contamination in 18 States and has documented perchlorate manufacturers or users in 39 States.

According to EPA's National Center for Environmental Assessment, only a small fraction of the perchlorate-using facilities have actually even been investigated. Its presence in soil, groundwater, and surface water pose serious health risks, particularly for newborn children and pregnant women. Perchlorate exposure has also been linked to physical and mental retardation and thyroid cancer.

Unfortunately we have do not have enough information about exactly where this chemical has infiltrated, who is responsible for its clean up or just how dangerous it is to human health. I cite this because it is one example of some very much untended business that we need to get busy with. It is time we respond to this public health threat by allowing communities access to information and speeding up EPA perchlorate standards.

I have legislation, the "Preventing Perchlorate Pollution Act," which would accomplish these goals. Now that this chemical has entered the drinking water supply, it is very important that we address this situation swiftly. We cannot exacerbate the problem by ignoring contamination anymore.

I stand ready, Mr. Chairman, to work with you and members of the subcommittee on this issue, and I appreciate the leadership of the ranking member on this topic. I am prepared to work with the subcommittee on reauthorizing this and other core provisions of the Safe Drinking Water Act to protect public health and the environment, but there is very much more work to be done as well.

Again I thank our witnesses for being here and I yield back.

Mr. GILLMOR. Does the gentleman from Pennsylvania have an opening statement?

Mr. PITTS. I will waive.

Mr. GILLMOR. The gentleman from Idaho.

Mr. OTTER. I will waive.

Mr. GILLMOR. And the gentleman from Oklahoma.

Mr. SULLIVAN. I will waive.

Mr. GILLMOR. The gentleman from Texas.

Mr. GONZALEZ. Thank you, Mr. Chairman. I will be brief, being the newest member of the committee and subcommittee.

I really thought a couple of things as my colleagues made their opening statements. My first observation is how privileged I am to be on this particular committee, and, in doing so, gladly actually gave up Financial Services, Small Business, and Homeland Security assignments, because it really is an incredible committee of which I am now a member. My concerns, of course, will be how much work will we be doing with this exclusive committee. Therefore, every one of my subcommittee assignments has been very important.

I was told, and maybe incorrectly, because I heard someone from the other side dispute, I guess, the degree of inactivity of this subcommittee. And I am willing to be educated if in fact this committee has met on more occasions than it has been represented to me. It is my understanding that it has been somewhat a dormant committee, and I think it is important to the point that process is important in the legislative process. Process really does dictate and mandate hearings by the appropriate committees.

I do not want to hold a piece of legislation hostage. I do not want to make it the poster child of some sort of protest. I would like to vote on the merits and the facts, and we will be doing that. Nevertheless, I think it is appropriate to point out the inactivity of the subcommittee and why something of this nature would rise to the point where it would merit this type of hearing, and we will do so because it is the appropriate committee of jurisdiction.

Nevertheless, I will join my colleagues in their concerns about the degree of activity and hopefully that the rest of this year we will see this committee much more engaged, and we will have other matters that are important to this side of the committee brought to the attention and merit hearings and maybe even a markup or two. Thank you very much.

Mr. GILLMOR. The gentleman yields back. Also we would like to welcome the gentleman to both the full committee and to the subcommittee. We look forward to working with you.

Does the gentleman from Nebraska have an opening statement?

Mr. TERRY. No.

Mr. GILLMOR. The gentlewoman from Illinois.

Ms. SCHAKOWSKY. Mr. Chairman, this subcommittee meeting reminds me a lot of what some people say about their high school reunion. It was a long time coming, and disappointing once it finally arrived. The inactivity of the subcommittee is especially troubling, given the pressing problems that we could and should be addressing. I agree fully with the chairman that we should be working in a bipartisan way to address the issues of the environment, and, for example, the issue of the lead in the water, in the drinking water. But with all due respect, Mr. Chairman, your writing a letter is not the same as having a public hearing on this matter so that we can all address the subject together. We could be using our time this

morning to handle our duty to provide institutional oversight by holding a hearing with Administrator Levitt on the EPA's budget.

My constituents, many of whom are avid environmentalists, really want to know why the administration's budget slashes 7 percent of the EPA's funding for fiscal year 2005, and how the administration expects the EPA to be able to enforce our environmental laws when the Bush budget will result in about 5,000 fewer inspections than conducted in fiscal 2000, and why the budget continues to underfund brownfields when already less than 1 in 3 applicants can get help to clean up old sites for economic development and reuse.

We could be acting on Mr. Bilirakis' Omnibus Reauthorization Act. The bill which has already passed the Senate has bipartisan support and is cosponsored by several members of this committee, including me.

We could be taking up any of the other 13 provisions of the Safe Drinking Water Act that expired in 2003.

If it is so important to reauthorize expired provisions of the act, then I find it especially troubling that we are not taking up the section authorizing the Drinking Water State Revolving Loan Fund. Sewers in my home State of Illinois desperately need additional assistance from this program so that the health of my constituents are better protected.

It seems to me, Mr. Chairman—and I mean absolutely no disrespect to my colleagues who are clearly here on behalf of their constituents and I look forward to hearing their testimony—that this is such an important committee hearing. This is our first markup in this entire session of Congress, and I know for my constituents environmental concerns are really at the top of the list. They are very concerned about it and are very pleased that I am on this subcommittee as well.

I congratulate our ranking member for raising the concern that we should be diligently doing our job to address the myriad of concerns that effect so many of the people in our districts and around the country. Thank you.

Mr. GILLMOR. The gentleman from Michigan.

Mr. STUPAK. Thank you, Mr. Chairman for holding this hearing and thank you to the witnesses for coming today.

While I certainly appreciate the fact that you have called upon the subcommittee to hold a hearing, the fact is this is the first hearing we have seen in almost 9 months and the first markup that has been held in this entire Congress. Even more disconcerting is that the legislation of choice is merely a grant provision that is specific to one State and is not included in the President's budget request this year, nor had it been included in any other year.

I don't mean to belittle the significance of this bill, and I am pleased to help out my New York colleagues, but on this side of the aisle we are frustrated because this subcommittee has many priorities it continues to ignore. Where are the hearings and markups on the 13 other provisions of the Safe Drinking Water Act that expired in 2003? How about a markup on another critically important issue, the importation of Canada's trash into Michigan and other neighboring States like Ohio and Pennsylvania? Although a hear-

ing was held in this subcommittee last July, it has since fallen by the wayside, with no movement by the chairman to mark up any of the 3 bills that have been introduced in this Congress by three members of the Committee on Energy and Commerce on this issue. One would direct the EPA to enforce an earlier agreement with Canada to stop the importation of municipal solid waste.

This is just one of a long list of important environmental issues that have failed to be addressed by the subcommittee. I would be interested to know, Mr. Chairman, if you plan on holding a markup on legislation addressing the issue of out-of-State trash importation in this Congress, or if I have to go back and tell my constituents in Michigan that they will have to continue to sit by while our State is being used as a dumping ground for other people's trash.

Finally, Mr. Chairman, it is budget time. This subcommittee has failed to call the EPA Administrator to explain the administration's 2005 budget request. Yet a hearing on extending the reauthorization of one provision out of the entire Safe Drinking Water Act is requested and granted within 72 hours. Again, I am pleased to help out my New York colleagues, but we need a little equity on this committee. I believe that this subcommittee is shirking its responsibility to address issues that protect the environment and public health. I yield back.

Mr. GILLMOR. The gentleman from Texas.

Mr. GREEN. Thank you, Mr. Chairman.

Like all of us, I want to welcome our New York colleagues to our subcommittee. It is good to have them before us.

Like my colleagues, it is interesting that our subcommittee has met only for the third time in this Congress to consider only one section of the 14 sections of the Safe Water Drinking Act. In terms of funding, we are only talking about reauthorizing 1.2 percent of the act for only one region of the country. New Yorkers deserve clean water and so does everyone else, Texans, Indianans, and every resident of every State. I know all water authorities in districts in my area throughout Texas would welcome reauthorization of this State Revolving Loan Fund to provide similar stability that this provision would be for New York.

Mr. Chairman, I would just ask—and I yield some time as I listen to the activities of our subcommittee—do you have a schedule for the markup on the remaining 14 sections of the Safe Drinking Water Act?

Mr. GILLMOR. To respond to the gentleman's questions, I did talk in my opening statement about some of the issues that we will be taking up, and I am not going to make any commitments I cannot keep, so I will not commit to any particular markup or any particular section, but we will be looking at a number of other matters.

Mr. GREEN. Thank you, Mr. Chairman. I guess that is my concern. And I want to help the New Yorkers, but in all honesty, there are 14 sections of the Safe Drinking Water Act that, granted, we are receiving appropriations for, but I also know that in our system here that oftentimes if it is not authorized, the Committee on Appropriations will say, "I'm sorry." so we could be in this position where only one section of the Safe Water Drinking Act has any appropriations, 1.2 percent of the act.

I want to help my colleagues, but also I think there are 49 other States who would also like to see some of the funding authorized again so we could stabilize that. Again, we have drinking water problems not just in D.C, but all across the country. You have got us in a problem because I do not want to hurt my colleagues from New York, but, Mr. Chairman I have a whole bunch of folks who depend on that revolving fund for their own benefit in my State along with the other States.

I would encourage you as strong as I can, if this bill goes out today, that we schedule a hearing on the other 14 sections so the rest of the country can enjoy the security of reauthorization. I yield back my time and ask my full statement be placed in the record.

Mr. GILLMOR. Without objection.

The Chair would make just one point in further response to the gentleman.

One of the factors that we look at in legislation is the likelihood that it is going to be a majority vote of this subcommittee and also the degree to which it has bipartisan support and does not become a partisan exercise.

The gentleman from Illinois, did you have an opening statement.

Mr. STUPAK. Mr. Chairman on that point, could you move the trash bills, then? Mr. Greenwood has one, Mr. Dingell has one, Mr. Rogers has one, all on this committee. It is bipartisan. We want any one of those three to move. We had a hearing and that has been about it. And we need some direction from this Congress, because Ohio, Pennsylvania, Michigan, our hands are tied with Canadian trash coming in. So we really would like to mark up one of those pieces of legislation. Pick whichever one you want and let us have a markup.

Mr. GILLMOR. I do not want to get sidetracked from this hearing, but let me respond. As you know, I am one of those who supports interstate trash legislation, and our problem in the past has been getting the votes in a bipartisan manner on this subcommittee to move it. I am still working on that. I have had contact with the ranking member of the full committee. I am not going to make a commitment, but I certainly would like to see that happen. I share your desire in that respect, although I am sure my colleagues from New York on the next panel do not necessarily share that desire.

Mr. STUPAK. Even from New York, it goes down to New Jersey and Pennsylvania. Some of them are saying the trash from any State should be allowed in. We are not saying restrict it. Those three bills have flexibilities in there, but the States need some relief and they look to the Congress to do it because of the Supreme Court case on Dafter. We would like to have a hearing on it.

If you need help going bipartisan, Mr. Dingell and I have been leading it on this side. We would be more than happy to help you get support for those bills. We just need some directing from the Chair and some nudging from the Chair to move those bills.

Mr. GILLMOR. I hope we will be seeing some more activity in that area.

Does the distinguished chairman of the full committee have a statement?

Chairman BARTON. I sure do, Mr. Chairman. I apologize for being late. I had a flat tire, believe it or not. I am told everything

is peace and harmony here, though, and we have it running like a top. Are we still in the opening statements?

Mr. GILLMOR. Yes, you are the last one.

Chairman BARTON. I am the last one? All right. According to what I have prepared, it says I am to thank you for calling this hearing and markup today. Thank you for that.

I want to commend Mr. Fossella who does not appear to be here. He is here. He is acting as a staff person there in the back. I want to thank Mr. Fossella for his hard work.

Developing water resource programs and a watershed basis makes good sense environmentally and financially. There are various approaches to the watersheds revolving throughout the country, and we need to recognize the value of these tools in solving tough problems.

The New York City Watershed Program is an example of what happens when people work together, focus on flexible approaches, and use sound science. The watershed has alleviated the need for building new water treatment facilities as well as reducing the amount of chemical and other disinfectants that need to be added to drinking water treatment systems.

The legislation before us today extends the fine work begun in New York in 1997. It encourages the kind of lasting watershed framework that moves beyond a simple structure and makes it a living part of a community.

I want to thank Chairman Gillmor again. I want to applaud the members of the New York delegation whose strong bipartisan—and I would like to emphasize that—bipartisan cooperation have brought us this bill. I am pleased to lend my support to their efforts.

Mr. Chairman, that is the prepared statement. I understand there may be a number of amendments that may be offered when we get to the markup. I hope we can handle those in an expeditious and fair fashion and move this bill so we can take it to full committee as soon as possible. I yield back the balance of my time.

Mr. GILLMOR. The gentleman from Illinois, Mr. Rush.

Mr. RUSH. I want to thank the chairman. I intend to be quite brief.

I must say, Mr. Chairman, that I am indeed puzzled by this subcommittee's priorities. After years of inaction, this committee is choosing to hold a markup on a very obscure and narrow grant program under the Safe Drinking Water Act that only affects one State. Mr. Chairman, I must say that I have the utmost respect for the New York delegation, and I certainly have much respect for my very, very close friend, Mr. Towns, and I do not want to be in any way distractful or harmful to the pursuits of the New York delegation. But in fact we are doing this markup, engaging in this markup in the context of lead and perchlorate-infected drinking water, aging and decaying drinking water infrastructure, and other pressing issues that are under the jurisdiction of the subcommittee and that affects every State in the Nation, including my own State of Illinois.

Mr. Chairman, I just believe that if we are going to be fair to the other citizens of this Nation, then we should bring forth appro-

priate legislation so that we can deal with the national issues that we are confronted with.

Mr. Chairman, last, it is my hope that this markup is the beginning of some very, very serious work ahead that will address a whole host of pressing matters facing the American public. Mr. Chairman, I yield back the balance of my time.

Mr. GILLMOR. The gentleman yields back.

Does the gentleman from Michigan have an opening statement? Mr. Rogers.

Mr. ROGERS. No. I will waive, Mr. Chairman.

Mr. GILLMOR. We have concluded opening statements and we can proceed to our distinguished panel. Let me start with the member of the full committee who is also a cosponsor of this legislation, Mr. Towns.

STATEMENT OF HON. EDOLPHUS TOWNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TOWNS. Thank you very much, Chairman Gillmor and Ranking Member Solis, and all the members of the subcommittee. I am delighted to be here. And I guess I should open up with the journey of a thousand miles starts with a single step. So I think that New York is No. 1, and I hope that you will be able to make other steps later on.

This legislation would reauthorize funding for the New York City Watershed Agreement, helping to ensure safe and healthy drinking water for the residents of New York. Mr. Chairman and members of the committee, this is a very, very important issue for all of us from New York. So I appreciate the subcommittee's attention to this matter.

New York City's vast water supply provides 1.4 billion gallons of drinking water to more than 9 million New Yorkers each day, with nearly 90 percent of those consumers residing in New York City. To supply millions of people with safe clean water takes an extensive water supply. In fact, the supply consists of 19 reservoirs and a watershed that spans more than 2,000 square miles. It covers 8 counties, 60 towns, and 11 villages in the Catskill Mountain region and the Hudson River Valley in New York State.

The effective protection of this essential natural resource is an enormous challenge. To protect this area, in 1997 environmental groups came together, with New York City and State officials upstate and downstate, and the Federal Government to create the New York City Watershed Agreement. This historic accord guaranteed continued and long-term protection for New York City's drinking water while safeguarding the economic viability and environmental quality of upstate communities in the watershed. While the historic landmark watershed agreement laid the groundwork for protecting the largest unfiltered drinking water supply in the country, the watershed agreement could only be successful if an effective water quality monitoring and surveillance program was implemented.

In 1996, Congress responded by authorizing $15 million annually for 7 years for projects under the watershed agreement to protect and enhance the water supply for New York City. Without the commitment of Federal funding, the watershed agreement could not

have been signed or implemented. Over the past 7 years, Congress has appropriated $31 million to implement a comprehensive monitoring and surveillance program, matched equally by grant recipients. In fact, New York City and New York State have leveraged those Federal funds, committing over $1.6 billion—that is "b" as in boy—to protect the New York City drinking water supply.

Unfortunately, authorization for Federal funding of the watershed agreement expired September 30, 2003, leaving its future in jeopardy.

H.R. 2771 solves this problem. The bill reauthorizes the New York City Watershed Agreement at its current funding level through 2010. This initiative is crucial to maintaining the safety of the New York City water supply and the economic security of upstate communities. Without the success of the watershed agreement, New York City would have to construct a massive water filtration plant at a cost estimated between $6- and $8 billion.

Mr. Chairman, while quick passage of this legislation is vital to the safety and security of New York City's water supply and jobs upstate, I would be remiss if I did not also acknowledge that I am aware that the members of the committee, including the ranking member, have raised some concerns and others have raised some concerns about other environmental issues. I am hopeful, Mr. Chairman, that the committee will also address these additional matters immediately after the recess.

Finally, Mr. Chairman, given the broad bipartisan support within the New York delegation—every member of our delegation supports this—I would urge a favorable reporting of the bill to the subcommittee. And I look forward to working with the bill's sponsors, my colleague Mr. Fossella, of course, and others to make this a reality by getting it to the floor as soon as possible and I am saying to you at least before Memorial Day.

On that note, I would like to say that being a part of the committee that has jurisdiction, I am also proud to serve on the committee and to say to my colleagues that I think one of the finest committees in the Congress is the Commerce Committee, and that I am so proud to be a part of it.

I would also like to take this opportunity to welcome Congressman Gonzalez to the committee and to say to him that I look forward to working with him. And remember that this is the first step, and a lot of things have to happen.

Mr. GILLMOR. Thank you very much Mr. Towns.

The distinguished gentlewoman from New York, also a co-sponsor of this legislation, Mrs. Kelly.

STATEMENT OF HON. SUE W. KELLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mrs. KELLY. Thank you very much, Mr. Chairman. I want to thank you for giving me the opportunity to testify this morning in support of H.R. 2771. I appreciate the subcommittee's interest in the bill that I have worked with Mr. Fossella to advance. The enactment of this bill has significant implications for my district which is immediately north of New York City. I represent the Hudson valley region, and every drop of New York City's water flows

through my district, which includes Westchester, Rockland, Orange, Dutchess and Putnam Counties.

New York City's tap water has been called the champagne of drinking waters because of its exceptional purity. It is because of actions that take place in my district and other upstate counties that make this water supply so pure. We are very proud to partner with the city to protect its water supply in a way that helps preserve the character of the Hudson River Valley.

Ever since the early 1900's when New York City constructed the Ashocan Reservoir in the Catskill Mountains, there were understandable differences of opinion that have surfaced in the effort to strike the balance between protecting the city's water and protecting thefreedom of our communities upstate which reside within the city's watershed. This tension has intensified in the early 1990's with the implementation of stricter national policies on water quality that has resulted in a lawsuit against New York City in 1994.

The result of good faith negotiations was the Watershed Agreement Act of 1997. This was a landmark compromise that has brought together those who had long disagreed with the promise of unprecedented investment levels in infrastructure, land management, and other development programs. Through assistance provided under the watershed agreement, communities in my district have been able to develop plans which protect the watershed and help preserve the character of their community as well.

The spirit of cooperation remains, but it is very fragile. Without the monitoring and surveillance program funded through the EPA, the agreement could very easily be jeopardized. Without the agreement and the critical assistance of the EPA, the balance we struck would be lost, thereby setting loose the establishing effect of regional discord and undermining local efforts to preserve their quality of life.

There is a significant cost efficiency aspect to this agreement that needs to be considered as well. The cost of a plan to filter New York City's water supply if the 1997 agreement falls apart has been estimated at $8 billion, and it could be more. We have made great progress since 1997, but more needs to be done. In fact, the EPA's midterm review stressed the importance of taking further actions to protect the Kensico Reservoir, which is immediately below my district, to ensure the quality of water that reaches the consumers. To do so will take more concerted efforts to acquire land and to protect the quality of all the lands in the upstate communities without disrupting the communities unduly.

Despite some differences, the watershed agreement is an area of common ground. I thank this committee for considering the legislation that will allow this mutually beneficial process to continue, and I appreciate the remarks of both sides of the aisle in their support of this piece of legislation. Thank you very much for letting me appear.

Mr. GILLMOR. Thank you very much, Mrs. Kelly.

We will now go to questions. I have just one, and that relates to the length of the reauthorization. The original act was authorized for 6 years and the bill that you have calls for 7 years, which I do not have any problem with.

There is a bill over on the Senate side, and I understand that the committee there only gave a 1-year reauthorization, and I am just interested from both of you in what is your feeling on the length of reauthorization. I do not have any problem going to 2010, but I think we may have an amendment on that subject.

Mrs. KELLY. Mr. Chairman, this is a very, very significant and important piece of legislation, and it does need time, because what is involved is land acquisition and negotiations with the communities that have been deeply affected because their land was taken by the State right when the reservoir system was put in place. The communities now have been growing, things have been changing, and we know more about the need to support clean water locally.

The other thing is the cost. Ed and I both know that a cost of $8 billion to build a filtration plant to the city is, frankly, enormous and something that the city may not be able to float without some help, so you will have another bill asking for some help there. We need the time and we need as much time as we can get to get this thing in place so the communities are comfortable and the city maintains the champagne of drinking waters in the United States.

Mr. TOWNS. I would like to associate myself with the remarks made of my colleague, and add that I hope that the Senate will acquiesce to our bill.

Mr. GILLMOR. Thank you. Ms. Solis.

Ms. SOLIS. Just to comment, a point of clarification. My understanding is that the funding request is actually for oversight monitoring, not for acquisition of land. So I wanted to ask you about that.

Mrs. KELLY. I believe you are correct, but that oversight and monitoring is very important because there is a piece that has already been set aside for land acquisition by New York State itself. So that is the land acquisition. But these things have to work. As you know, anything in a community is a negotiated settlement, especially where this water is concerned.

Ms. SOLIS. I, too, am aware that the bill in the Senate extends this program for a year. Thank you.

Mr. GILLMOR. Are there further questions of this panel? If there are not, thank you both very much.

We will call our next panel: Mr. Walter Mugdan, the Director of the Division of Environmental Planning and Protection, New York; Erin Crotty, the Commissioner of the New York Department of Environmental Conservation; Alan Rosa, Executive Director of the Catskill Watershed Corporation; and Mr. Eric Olson, a senior attorney with the Natural Resources Defense Council.

I will also let the panel know we have been informed that we will probably have a series of votes starting shortly, so we will try to get started and go as quickly as we can.

Mr. Mugdan.

STATEMENTS OF WALTER MUGDAN, DIRECTOR, DIVISION OF ENVIRONMENTAL PLANNING AND PROTECTION, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2; ERIN M. CROTTY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION; ALAN ROSA, EXECUTIVE DIRECTOR, CATSKILL WATERSHED CORPORATION; AND ERIK D. OLSON, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNSEL

Mr. MUGDAN. Good morning Mr. Chairman, members of the subcommittee. My name is Walter Mugdan. I am the Director of the Division of Environmental Planning and Protection in Region 2 of the U.S. Environmental Protection Agency. I appreciate this opportunity to appear before you today to discuss EPA's role in protecting New York City's drinking water supply.

As you have heard, New York City's drinking water system is the largest unfiltered system in the Nation. It supplies over 1.3 billion gallons of high-quality drinking water to 9 million people daily. Ninety percent of that water comes from the Catskill/Delaware or Cat/Del watershed.

Under the surface water treatment rule of the Safe Drinking Water Act, drinking water taken from surface water sources must be filtered to remove microbial contaminants. However, the law does allow EPA to grant a waiver from this requirement to water suppliers if they demonstrate that they have an effective watershed control program and that their water meets strict water quality standards.

Working in close coordination with New York State, EPA issued New York City such a waiver called a Filtration Avoidance Determination, or FAD, in November 2002 for the water coming from the Cat/Del watershed. The current FAD follows and builds upon several previous filtration avoidance determinations by EPA during the past decade. The most recent of these was in 1997. The 1997 waiver was issued in conjunction with the precedent-setting Watershed Memorandum of Agreement, MOA, that you have heard about, which was signed by the city, the State, EPA, and the upstate watershed communities and a number of environmental groups. I note that Commissioner Crotty of New York State DEC was instrumental in the successful negotiation of that agreement.

The 1997 FAD was a strong document. It embodied many programs agreed to by the stakeholders who signed the MOA; but our 2002 FAD, which was also developed in consultation with New York State, is by any measure significantly stronger. Virtually every protection and remediation program called for in the 1997 FAD is being continued in the 2002 FAD, and a number of the programs have been significantly strengthened and expanded.

To ensure that the city's water supply remains high quality in the future, the FAD requires New York City to carry out a wide range of watershed protection programs at an investment of over $1.2 billion. On the other hand, filtration of the Cat/Del watershed system would cost New York City between $6 and $8 billion, plus an estimated $200 million a year in operation and maintenance costs. So the watershed protection program, even though it is expensive, is a considerable cost savings.

As we have said, the city's Cat/Del system is by far the largest surface water supply system in the U.S. for which a filtration avoidance determination has been made. Successful implementation requires close cooperation with different levels of government as well as numerous nongovernmental stake holders. EPA works closely with the New York State Department of Environmental Conservation and the New York State Department of Health on all aspects of this program.

Commissioner Crotty has dedicated a tremendous amount of her staff time and her own time to make sure that this program, which has received worldwide acclaim, continues to be successful. It includes a number of programs under the filtration avoidance determination such as upgrading of wastewater treatment plants, new wastewater infrastructure programs, a program to address how best to use agricultural lands, a community wastewater management program, a septic systems improvement and replacement program, a program to reduce turbidity in the Catskill area waterways, and the construction of a UV or ultraviolet disinfection facility that will provide an invaluable additional level of protection for the Cat/Del water supply system.

In my written statement I have provided some additional information about these programs. I would like to take a moment to highlight one program of particular interest and importance, which is the land acquisition program that Congresswoman Kelly alluded to.

Under this program which operates on a willing seller/willing buyer basis, the city undertakes to acquire undeveloped land in the watershed. Over the past 6 years, the city has obtained or has under contract easements on or direct ownership of more than 52,000 acres obtained at a cost of $131 million. But it is not just the quantity that is important, it is the quality of the lands that are being acquired that makes for this program being successful. To date, over 70 percent of the acreage obtained is in what would be designated as high-priority areas, including about 1,200 acres of wetlands.

As the initial solicitation component of that program winds down, the city has begun to resolicit in high-priority areas. It is also working closely with local land trusts in order to close deals with landowners who might prefer to work through a third party. The city is more than a third of the way through this 15-year program which is the foundation of the city's protection program. EPA will continue to monitor the progress of that program very closely.

EPA's 1997 FAD focused on the planning and the initiation of the various protection programs, and it required the city to report on the progress of those programs.

By contrast, the 2002 FAD focuses on milestone dates for specific actions and has more focused results-oriented reporting requirements.

Finally, the 2002 FAD places more emphasis on monitoring and program analysis. The bottom line is that the city has to have a comprehensive monitoring program in place that is adequate to gauge the success or the failure of the many Watershed Protection Programs that are in the FAD and in the watershed MOA.

No matter how much monitoring takes place, unless the program is functionally connected to track the attainment of the objectives of the Watershed Protection Program, its adequacy and the adequacy of the city's watershed protection efforts will be difficult to evaluate.

To that end, New York City, in consultation with EPA and the State of New York, redesigned its watershed monitoring program in 2003 to ensure that it is equipped to detect long-term trends and that it is set up to evaluate the success of many of the programs that are now being implemented.

Questions that the monitoring program are designed to answer include: What is working? What isn't? Are we getting the water quality benefits that we expect? And would a particular program work better in a particular basin?

It is important to understand this is not a static program. It is constantly subject to review and evaluation, and we are going to continue to work with the city and the State to make modifications and enhancements as necessary.

The scope of this monitoring program is enormous. There is a huge number of data points being collected. In the 2002 FAD——

Mr. GILLMOR. Could I ask you, Mr. Mugdan, if you could wrap up? We are trying to stick as close as we can to our 5-minute-limit, although your entire statement will be entered into the record.

Mr. MUGDAN. Let me wrap up, if I may. EPA works closely with New York State DEC to define the monitoring components of the city's Watershed Protection Program and to optimize the expenditure of available Safe Drinking Water Act funds. It is through these collaborative efforts that we determine whether modifications to and additional resources for the city's monitoring program are necessary to meet the long-term objectives of the filtration avoidance determination.

If through this process we conclude that such modifications or additional resources are necessary to meet these objectives, we will require their deployment as a condition of continued filtration avoidance.

As you know, Congress authorized, through Section 1443 of the act, $15 million to be appropriated to the EPA for each of the fiscal years 1997 through 2003 for the purpose of providing assistance to the State to carry out watershed monitoring programs in support of the city's efforts. Under this authorization Congress has appropriated $30.3 million through fiscal year 2003.

All of these funds have supported monitoring programs that enhance the city's ability to comply with the FAD. And our objective and that of the State is to ensure the protection of the drinking water supply for 9 million people, and that is what we will continue to do.

Thank you very much.

[The prepared statement of Walter Mugdan follows:]

PREPARED STATEMENT OF WALTER MUGDAN, DIRECTOR, DIVISION OF ENVIRONMENTAL PLANNING AND PROTECTION, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2

Good morning Mr. Chairman and Members of the Subcommittee. I am Walter Mugdan, Director of the Division of Environmental Planning and Protection in Region 2 of the U.S. Environmental Protection Agency (EPA). I appreciate this oppor-

tunity to appear before you to discuss EPA's role in protecting New York City's drinking water supply.

New York City's drinking water system is the largest unfiltered system in the nation, supplying 1.3 billion gallons of high quality drinking water to 9 million people daily. 90% of the water comes from a 1600 sq. mile area in the Catskill Mountains known as the Catskill/Delaware (Cat/Del) watershed. Drinking water taken from surface water sources must, under the Surface Water Treatment Rule of the Safe Drinking Water Act (SDWA), be filtered to remove microbial contaminants. The law allows EPA to grant a waiver from this requirement to water suppliers if they demonstrate that they have an effective watershed control program and that their water meets strict quality standards. Working in close coordination with New York State, EPA issued New York City such a waiver, called a Filtration Avoidance Determination (FAD), in November 2002 for water coming from the Cat/Del watershed.

The current FAD follows and builds upon several previous filtration avoidance determinations by EPA during the past decade. The most recent of these was in 1997. The 1997 waiver was issued in conjunction with the precedent-setting New York City Watershed Memorandum of Agreement (MOA) signed by the City, New York State, EPA, the upstate watershed communities, and a number of environmental groups. I must note that Commissioner Crotty was instrumental in the successful negotiation of that Agreement. The 1997 FAD was a strong document, which embodied programs agreed to by the many stakeholders who signed the Watershed MOA. Our 2002 FAD, which was also developed in consultation with New York State, is, by any measure, significantly stronger. Virtually every protection and remediation program called for in the 1997 FAD is being continued, with the City providing the funding necessary to meet the many specific milestones in the 2002 FAD; and a number of the programs are being significantly expanded.

To ensure that the City's water supply remains high quality in the future, the FAD requires New York City to carry out a wide range of watershed protection programs, at an investment of approximately $1.2 billion. Filtration of the Cat/Del system would have cost New York City $6-$8 billion, plus an estimated $200 million a year in operation and maintenance. Thus, the watershed protection program, while expensive, is a considerable cost savings. New York City's Cat/Del system is by far the largest surface water supply system in the United States for which a Filtration Avoidance Determination has been made.

Successful implementation requires close cooperation with different levels of government as well as numerous non-governmental stakeholders. EPA works closely with the New York State Department of Environmental Conservation and the New York State Department of Health on all aspects of the program. Commissioner Crotty has dedicated a tremendous amount of her staff's time, and her own time, to make sure that this program, which has received world-wide acclaim, continues to be successful.

I would like to go over the status of a few of the programs that are required under EPA's Filtration Avoidance Determination:

- *Wastewater Treatment Plant Upgrade Program.* At a cost of over $200 million, the City is funding the upgrade of all City- and non City-owned wastewater treatment plants that discharge into surface water in the watershed to state-of-the-art (tertiary treatment) technology. To date, over 90% of wasteflow in the Cat/Del watershed is subject to advanced tertiary treatment. We anticipate all plants will be operational by the end of 2004.
- *Land Acquisition Program.* Under this program, the City will continue to solicit for the acquisition of land, either to acquire it outright or to acquire conservation easements which restrict development that could threaten water quality. The program, as laid out in the 1997 FAD and the Watershed MOA, sets a detailed schedule for such solicitations, and is based on a "willing seller" philosophy. Over the past six years, since 1997, the City has obtained or has under contract, easements or direct ownership over 52,000 acres, obtained at a cost of $131 million. Moreover, it is not just quantity that is important, it is the quality of the land being acquired that makes for a successful program. To date, over 70% of the acreage obtained is in high priority areas, including about 1,200 acres of wetlands. As the initial solicitation component of the program winds down, the City has begun to re-solicit in high priority areas. It is also working closely with local land trusts in order to close deals with landowners who might prefer to work through a third party. The City is more than one third of the way through a 15- year program. This is the foundation of the City's watershed protection program, and we will monitor its progress very closely.
- *Stream management program.* This program is intended to address pervasive stream degradation that has contributed to erosion and the loss of riparian buffers. The FAD contains milestones for 10 large restoration projects through 2007,

plus the completion of 9 stream management plans. The management plans are important as they will lay the groundwork for future restoration and stream buffer protection projects. These are expensive, resource-intensive efforts, and the City has committed itself to work on these in close cooperation with local Soil and Water Conservation districts, County planning agencies and other watershed partners.

- *Agricultural program.* The objective of the Watershed Agricultural Program is to prevent pollution and improve water quality by identifying and implementing structural changes and best management practices in order to minimize pollutants from farms reaching the streams that feed the City's reservoirs. Over 95% of the large farms in the watershed are enrolled in this voluntary program. Run by farmers (through the non-profit Watershed Agricultural Council) and funded by the City, this program provides financial and technical assistance to farmers. To date, over 2,500 actions have been implemented using best management practices at a cost of $18.6 million. Under the 2002 FAD this program was expanded to address small farms in the watershed.

The Watershed Agricultural Council, with funding from New York City and the USDA Farm Service Agency, is also instituting the Conservation Reserve Enhancement Program in the watershed. This is a voluntary program that protects streamside land by taking it out of production and placing it in vegetative buffers for 10 to 15 years. To date, 376 stream miles have been protected with active riparian buffers.

- *New wastewater infrastructure program.* The City is well on its way to completing new advanced wastewater treatment facilities in all 7 high priority towns in the Catskills. Completion of the first 5 facilities is expected in 2004. The remaining two are expected to go online in 2006.
- *Community wastewater management program.* The 2002 FAD includes a commitment by the City to implement, through the Catskill Watershed Corporation, a new program to address wastewater problems in five additional small Catskill towns. These towns currently rely on septic systems, many of which are or may soon be failing. There are FAD milestones for the design and construction of necessary wastewater treatment improvements.

These and other infrastructure programs focus on population centers where centralized wastewater treatment looks to be a better option than individual septic systems. These combined programs will end the discharge of approximately 2,700 marginal septic systems, or over 1.1 million gallons per day of effluent, into the watershed. For those septic systems that are amenable to repair or replacement and are found to be failing, there is the Septic program.

- *Septic program.* This is a City-funded program that is also being implemented by the Catskill Watershed Corporation. Over 1,800 septic systems have been repaired or replaced to date. The 2002 FAD includes a commitment by the City to implement, through the Catskill Watershed Corporation, a new program to support the operation and maintenance of septic systems, focusing first on those systems that were recently repaired or replaced.
- *Catskill Turbidity Control program.* This is a new program under which the City will develop and implement structural (i.e., in-reservoir) and non-structural (i.e., stream best management practices) solutions to the perennial problem of turbidity in the Catskill watershed. Milestones for program design and implementation are included in the FAD.
- *UV disinfection facility for Cat/Del system.* The FAD includes a very important commitment by the City to design and construct an ultra-violet (UV) disinfection facility for the Cat/Del water supply system by 2009. The UV facility will provide an additional barrier in what is already a multi-barrier approach to water supply protection, and will therefore provide a tremendous health benefit to water consumers.

EPA's 1997 FAD focused on program initiation and required the City to report out on the progress of those programs. By contrast, the 2002 FAD focuses on milestone dates for specific actions and has more focused, results-oriented reporting requirements. Wastewater infrastructure, stream corridor protection, agriculture, and UV disinfection are just a few examples. New programs such as the Catskill Turbidity Control program naturally call for planning before implementation—but the FAD clearly focuses on and expects action.

In addition, the City and New York State are putting more resources into enforcement and enforcement coordination. A formal protocol has been developed to better coordinate the implementation and enforcement of wetlands and stormwater regulations—something akin to the very successful City/State program to address point source pollution in the watershed.

And finally, the 2002 FAD places more emphasis on monitoring and program analysis. The bottom line is that the City must have a comprehensive monitoring program in place that is adequate to gauge the success (or failure) of the many watershed protection programs that are in the FAD and Watershed MOA. No matter how much monitoring takes place in the watershed, unless the monitoring program is functionally connected to track the attainment of the objectives of the City's watershed protection programs, its adequacy, and the adequacy of the City's watershed protection efforts, will be difficult to evaluate.

To that end, New York City, in consultation with EPA and New York State, redesigned its watershed monitoring program in 2003 to ensure that it is equipped to detect long-term trends and that it is set up to evaluate the success of many of the programs that are now being implemented. Questions that this program is designed to answer include: What is working and what isn't? Are we getting the water quality benefits that we expected? Would a particular program work better in a particular basin? It is important to recognize that this is not a static program. It is constantly subject to review and evaluation, and we will continue to work with the City and New York State to make modifications and enhancements as necessary.

The scope of the City's sampling program is enormous. Besides daily sampling at aqueduct intakes and the distribution system to meet the objective criteria requirements of the Surface Water Treatment Rule, New York City routinely conducts at least twice-monthly sampling at all reservoirs (at several locations and at several depths), at over 130 stream locations, and at the discharges of all 106 wastewater treatment plants in the watershed. In addition, the City conducts monitoring that targets specific concerns such as pathogens, waterfowl, storm-events and biological indicators of stream health.

In the 2002 FAD, the City agreed to submit an annual Water Quality Indicators Report as a step towards integrating, analyzing and disseminating the tremendous amount of water quality data that it collects in the watershed. In fact, we received the second of these annual reports yesterday. In addition, the City will submit a comprehensive program and water quality evaluation report in March 2006. That report will provide a rigorous basin-by-basin analysis of the City's watershed protection programs and will attempt to answer the questions posed above. The March 2006 report will also aide EPA and New York State, as we evaluate the City's watershed protection efforts in preparation for our next filtration determination, scheduled for April 2007.

In addition to the City's own monitoring program, Congress authorized, through the 1996 Amendments to the Safe Drinking Water Act, $15 million to be appropriated to the EPA Administrator for each of fiscal years 1997 through 2003, for the purpose of providing assistance to New York State to carry out watershed monitoring programs to support New York City's efforts. Congress has earmarked a total of $35.4 million in the annual appropriations act from fiscal years 1997 through 2004. All of these funds support monitoring programs that enhance the City's ability to comply with the FAD.

EPA works closely with the New York State Department of Environmental Conservation to define the monitoring components of the City's watershed protection program and to optimize the expenditure of funds earmarked by Congress. It is through these collaborative efforts that we determine whether modifications to the City's monitoring program are necessary to meet the long-term objectives of EPA's filtration avoidance determination. If, through this iterative process, we conclude that such modifications are necessary to meet these objectives, we will require their deployment as a condition of continued filtration avoidance.

In conclusion, compliance with our Filtration Avoidance Determination will achieve the objectives of the Safe Drinking Water Act and the Surface Water Treatment Rule for unfiltered systems. Our FAD establishes clear objectives, provides for comprehensive programs and sets aggressive milestones for their implementation. It also requires a robust monitoring program, the results of which have been and will continue to be used to define the scope of City's watershed protection program. We will continue to work closely with New York State on a program that is of paramount importance to both our agencies, the protection of the drinking water supply for 9 million people.

Mr. Chairman, this concludes my prepared statement. I appreciate your interest in this issue, and would be pleased to answer any questions you or the Members of the Subcommittee may have.

Mr. GILLMOR. Thank you.

Commissioner Crotty?

STATEMENT OF ERIN M. CROTTY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Ms. CROTTY. Thank you, chairman. I really appreciate the opportunity to give testimony today.

On behalf of Governor George Pataki, I want to thank you for holding today's hearing, H.R. 2771. The legislation is necessary to protect the drinking water supply of 9 million New Yorkers. That is half the State's population. And that represents 3 percent of the Nation's population.

The Governor and I also want to thank Congressman Fossella and Congressman Towns and Congresswoman Kelly for testifying today and for their leadership in sponsoring this leadership. The cosponsorship of the entire New York delegation, I don't need to tell you, is symbolic and highlights the importance of this legislation to New York State.

And I was particularly heartened to hear the unanimous support for the measure in the subcommittee members' opening statements this morning.

The New York City water supply is an engineering marvel. It actually is two different water supply systems. There is the Catskill and Delaware system that is located in the Catskill Mountains, which are located west of the Hudson River and supply 90 percent of the city's drinking water. And then there is the Croton system, which is east of the Hudson River that supplies 10 percent. The Croton system has to be filtered and the city will provide filtration within the next decade. The Catskill and Delaware system will not be filtered. And as the largest unfiltered drinking water supply in the Nation, your help will ensure its long-term protection.

EPA promulgated the Surface Water Treatment Rule in 1989 which required all public unfiltered drinking water supplies to be filtered unless they had watershed control criteria in place. New York City faced building a filtration system which could cost up to $8 billion or develop a comprehensive Watershed Protection Program.

In January and again in December 1993, EPA made a determination that New York City could avoid those filtration costs provided that certain watershed protection strategies were put in place. The city proposed excessive revisions to its 1954 watershed regulations, and the battle lines were clearly drawn.

There were up-staters against down-staters, water consumers versus watershed residents. Recognizing the need for a new collaborative approach, Governor Pataki convened the Ad Hoc Watershed Committee in April 1995 to break the impasse. After 7 months of negotiations, we reached an agreement in principle, and 2 years later, we reached the historic watershed agreement, which cemented a partnership among New York City, New York State, the environmental organizations, EPA and 80 watershed host communities. The landmark agreement is the first and only of this magnitude in the Nation and is truly viewed as a national model on watershed protection.

The watershed agreement has 3 core components: The acquisition of water-quality-sensitive land by the city from willing sellers; enhanced watershed rules and regulations and partnership programs to ensure the protection of the watershed and the protection

of the economic vitality of the watershed communities; and of course a FAD from EPA which is in effect right now until 2007.

While, at times, I will admit these efforts can be quite challenging, the watershed agreement proves that environmental and public health protection and economic viability are compatible public policy objectives. This historic agreement will continue to be successful only if an effective and sophisticated water quality monitoring and surveillance program for the watershed is in place.

To address this concern, Congress approved language in the Safe Drinking Water Act Amendments of 1996 authorizing EPA with up to $15 million annually for 7 years for demonstration projects as part of the Watershed Protection Program for the protection of the drinking water supply. As a result of this authorization, we have been lucky enough to receive $31 million and matched it equally by recipients for 66 projects.

H.R. 2771 would allow this authorization to stay in place through 2010. Congressional authorization for this EPA program has expired, but clearly the need has not. The commitment of Congress and EPA to support the effective protection of the New York City watershed is the linchpin that holds this agreement together.

The Federal funding gives us the ability to literally take the temperature of the watershed, assess its conditions and administer appropriate remedies before water quality is compromised. It is a perfect complement to the efforts being undertaken by the State of New York, New York City and the watershed communities to protect the watershed in a scientifically sound and fiscally responsible manner.

The watershed agreement brought out the best in government officials. Theodore Roosevelt is quoted as saying that, "A Nation behaves well if it treats natural resources as assets which it must turn over to the next generation increased and not impaired in value." I believe New Yorkers and Congress have behaved well in developing this historic agreement and providing the means to demonstrate its effectiveness through the Safe Drinking Water Act Authorization. Our children and our children's children will be proud of what we have done.

We need your help in continuing to develop the scientific base and our understanding of the effectiveness of the Watershed Protection Program to make certain that the course of action chosen will continue to protect the drinking water supply of 9 million New Yorkers.

Chairman Gillmor, on behalf of Governor Pataki, I want to thank you for holding the hearing on the issue which is important to all New Yorkers. I look forward to working with you and Members of the subcommittee and your staff to ensure the swift passage of H.R. 2771.

[The prepared statement of Erin M. Crotty follows:]

PREPARED STATEMENT OF ERIN M. CROTTY, COMMISSIONER, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Chairman Gillmor and members of the Subcommittee, on behalf of Governor Pataki I want to thank you for holding today's hearing on H.R. 2771. As I will outline below, this legislation is necessary to protect the water supply of nine million New Yorkers—more than half of the State's population. Because of this bill's importance, the Governor and I want to thank Congressman Fossella and Congressman

Towns for their leadership in sponsoring this important measure. The co-sponsorship of 21 of their colleagues in the New York Delegation highlights the importance of this legislation to New York State.

HISTORY AND OVERVIEW

This Watershed, commonly referred to as the "New York City Watershed," is the drinking water source for eight million New York City residents and one million upstate New Yorkers.

The New York City water supply system is an engineering marvel which combines reservoirs, controlled lakes and streams, pumping stations, and 170 miles of aqueducts. The Watershed is composed of two water supply systems. The Catskill and Delaware system is located predominately west of the Hudson River and supplies ninety percent of New York City's drinking water. The Croton system—which came on line in 1842—is located East of the Hudson River in portions of Westchester, Putnam and Dutchess Counties and supplies ten percent of the City's water supply but has provided up to thirty percent in times of drought.

Due to the impacts of development and the natural characteristics of the region, the New York State Department of Heath determined in 1992 that the Croton System must be filtered. The City will invest over $600 million in already committed funds to build a filtration plant for the Croton System. The filtration plant is scheduled to be constructed and operational between 2010 and 2012.

In 1911, after construction of the reservoir system had been partially completed, the Public Health Law was amended to effectively give New York City control over activities in its Watershed. This was a legislative and policy achievement of some note since most of the water supply system lies outside the jurisdictional boundary of the City. Furthermore, the powers granted to the City were broad, including the authority to promulgate regulations for the purpose of protecting the Watershed. The first regulations governing activities in the Watershed, all 2 ° pages, were adopted by both the City and the State in 1954. The City also has the right to exercise eminent domain to expand or protect its Watershed pursuant to state law.

With development spreading out of the country's metropolitan areas, many public health experts and citizens became concerned about the consequences of such growth on water quality. More than 30,000 on-site sewage treatment and disposal systems and 41 centralized wastewater treatment plants discharge into the upstate watershed. Non-point source pollution from roads, dairy farms, lawns, and golf courses containing fertilizers, herbicides, pesticides, motor oil, road salt and sediment impacts the watershed. Responding to that concern, Congress passed the Safe Drinking Water Act (SDWA) Amendments of 1986 which authorized the Environmental Protection Agency ("EPA") to promulgate regulations to identify criteria under which filtration of a surface water drinking source would be required. Following its adoption, EPA began to monitor more closely New York City's unfiltered public drinking water system.

EPA promulgated the Surface Water Treatment Rule in June 1989 which required all public unfiltered surface drinking water systems in the country to provided filtration by June 1993 unless the water supply system could meet watershed control criteria to avoid filtration. New York City faced building a filtration system estimated to cost up to $8 billion or develop a comprehensive Watershed protection program.

In January 1993 and again in December 1993, the EPA made a determination, the "Filtration Avoidance Determination," that New York City could avoid filtering its water supply provided that the City implement certain Watershed protection strategies, including updating its Watershed regulation and acquiring at least 80,000 acres of environmentally sensitive land. Filtration of the City's water supply system could be avoided until December 15, 1996 or until the EPA made a further determination.

As a result of EPA's action, the City proposed excessive revisions to the 1954 Watershed protection regulations. The reaction was instantaneous and some Watershed residents argued that the Watershed regulations would suffocate all economic opportunities in the Watershed. In addition, New York City applied for a water supply permit from the New York State Department of Environmental Conservation to begin acquiring environmentally sensitive property. The battle lines were clearly drawn—upstaters against downstaters, water consumers versus Watershed residents. In the months and years that followed the 1993 Filtration Avoidance Determination, the City released four revisions to their Watershed regulations. None were acceptable to all parties.

THE WATERSHED AGREEMENT

Recognizing the need for a new collaborative approach to make a FAD possible, Governor Pataki convened the Ad Hoc Watershed Committee in April 1995 to break the impasse. After seven months of negotiations an agreement in principle was reached and, on January 21, 1997, the historic "New York City Watershed Agreement" which cemented a partnership among New York City, New York State, EPA, environmental representatives, and the 80 Watershed host communities, was signed. This landmark agreement formed a new partnership to protect New York City's Watershed, yet ensured the economic vitality of the Watershed communities. Its innovative, cooperative watershed protection program is the first and only of this magnitude in the nation, and is viewed as a national model for watershed protection.

The Watershed Agreement has three core components: acquisition of water quality sensitive land by the City from willing sellers; enhanced Watershed Rules and Regulations; and "Partnership Programs" to ensure protection of the Watershed and protection of the economic vitality of Watershed communities. None of these programs or efforts can be accomplished successfully without the cooperation, hard work and determination of all involved parties. While at times these efforts can be challenging, the sheer volume of work undertaken demonstrates the overwhelming desire of the parties to make the Agreement a success. The Watershed Agreement proves that environmental and public health protection and economic viability are compatible public policy objectives.

THE NEED FOR FEDERAL ASSISTANCE

While this historic Agreement laid the groundwork for the protection of the New York City Watershed, it will continue to be successful only if an effective and sophisticated water quality monitoring and surveillance program for the Watershed is in place. To address this concern, the United States Congress approved language in the Safe Drinking Water Act Amendments of 1996 (P.L. 104-182) to provide EPA with up to $15 million annually for seven years "for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system . . ." As a result of this authorization, a total of $31 million has been provided and matched equally by recipients, for projects that have evaluated the impacts of land use on the drinking water supply and monitored nonpoint source pollution that could negatively impact water quality. Other projects have comprehensively sampled and assessed the effects of trace organics and metals, toxics, pesticides and nutrients in the watershed. We also have demonstrated which best management options would be the most effective at reducing phosphorus loading in runoff and storm water.

Working together, the City and the State have taken such innovative actions as developing three-dimensional models of Total Maximum Daily Loads to the water supply and creating an integrated, watershed-wide monitoring program to address source and ecosystem impairments. We have developed new, state-of-the-art Geographic Information System technologies. Wetlands have been mapped for potential acquisition, and cutting-edge technology has been developed to devise biocriteria for wetlands disturbances.

Watershed funds have been used to support essential education and outreach programs for the general public, and to determine the most efficacious and cost-effective best management practices. We have prioritized agricultural concerns, by comprehensively assessing the impacts of nonpoint source pollution on the water supply system, including agricultural waste and agricultural run-off. Overall, our actions have been aggressive, and intended to use the funds which Congress has provided wisely, innovatively, and cost-effectively.

Congressional authorization for this EPA program has expired, but the need for it has not. Through the efforts described above, as well as other initiatives, we are enhancing the protection of New York City's water supply while developing models of watershed protection that are easily translated to other regions of the country.

The Watershed Agreement represents a consensus of all parties involved, and has fostered the implementation of many innovative watershed protection programs and pollution prevention initiatives. The commitment of Congress and EPA to support the effective protection of the New York City Watershed is the linchpin that continues to hold the entire Agreement together.

The federal funding gives us the ability to take the temperature of the Watershed, assess its conditions, and administer appropriate remedies before water quality is compromised. It is a perfect complement to the efforts being undertaken by New York State, New York City, and the Watershed communities to protect the Watershed in a scientifically sound and fiscally responsible manner. With the help of the

federal government, we are better able to monitor the quality of the drinking water of nine million people and prevent the degradation of this vital natural resource before it occurs.

CONCLUSION

The Watershed Agreement brought out the best in government officials. The negotiations required the participants to think outside the box. Reaching agreement and implementing the Agreement has required creativity, patience and perseverance.

Theodore Roosevelt is quoted as saying the "a nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value."

I believe that New Yorkers and Congress have behaved well in developing this historic Agreement and providing the means to demonstrate its effectiveness through the SDWA authorization. We have dramatically increased the future value of the Watershed, of New York City's drinking water, and of the Catskill and Hudson Valley regions. Our children and our children's children will be proud of what we have done.

We need your help in continuing to develop the scientific base and our understanding of the effectiveness of the Watershed protection programs to make certain that the course of action chosen will continue to protect the drinking water supply of nine million Americans.

Chairman Gillmor, on behalf of Governor Pataki I want to thank you again for holding a hearing on an issue which is important to all New Yorkers. I look forward to working with you and your staff to ensure the swift passage of H.R. 2771. Thank you.

Mr. GILLMOR. Thank you, Commissioner.

Mr. Rosa?

STATEMENT OF ALAN ROSA, EXECUTIVE DIRECTOR, CATSKILL WATERSHED CORPORATION

Mr. ROSA. Thank you, Mr. Chairman, good morning. It is a privilege to speak with you today about the Catskill mountains, an area that I call home and a region that has supplied pure water to millions of New Yorkers for almost a century.

I would like to give you a little personal background. I have lived Dry Brook Valley near Arkville in Delaware County, New York, in the middle of the Catskill Park. My family has lived in this area for the better part of 200 years. My father was a forest ranger with the State Conservation Department, and our home is surrounded by forever wild forest preserve lands.

Naturally, I grew up for a love of the outdoors and hunting and fishing. There is still nothing I would rather do than take my flyrod down to the east branch of the Delaware River and try to outsmart a trout or two.

I was an accountant and small business owner before I was elected supervisor of the Town of Middletown in 1990, the year that the New York City Department of Environmental Protection released its draft Watershed Protection Program.

Three months after I took office, I became involved in organizing the Coalition of Watershed Towns, which included representatives of 50 towns and villages in a 1,600 square mile west of the Hudson River. We were very concerned about the proposed regulations and their effect on our farms and communities. We worried that the rules would threaten our very survival.

Our biggest worry was the city would have the power to condemn private property in order to acquire land to keep it undeveloped. This was the biggest reason I became involved in the effort to negotiate a fair deal for the up-state communities. Several of my rel-

atives were displaced when the city built its reservoirs in the Catskills. I did not want my family's painful experience to be repeated. I was afraid that the proposed regulations in the city land acquisition plans would mean that my children and my neighbors' children would no longer have the opportunity to live and make a living here as their ancestors had.

We talked and debated and argued for 4 years trying to figure out how the city could avoid building a budget-busting filtration plant while not suffocating commerce or imposing the costs of additional regulations onto the local residents, businesses and municipalities. This was a challenge, to put it mildly.

Not long after George Pataki took office as Governor, in 1995, he appointed his chief counsel to mediate an agreement. That fall, we had a conceptual agreement between the Coalition and the city, and the final memorandum agreement was signed in Albany in January 1997.

Among other things, it allows the city to buy but not condemn vacant land. The EPA, which drove the watershed protection effort, was and remains a key player in the MOA.

The MOA established the Catskill Watershed Corporation to develop and implement a number of environmental-protection, economic-development programs funded by the city. The CWC Board of Directors, which includes 12 elected officials from 5 counties along with city, State environmental representatives elected me as the first President, and I became the executive director in 1998.

The new relationship between the up-state communities and the city could be called a shotgun marriage. Our shared history is not a happy one, and we still argue now and then, but the MOA has given us a framework to deal with difficult issues as equal partners on a level playing field.

The bottom line is we all want clean water. Those of us who live in the watershed, after all, take the first drink. I believe that basically people want to do the right thing and protect the critical resources.

But in our area, where opportunities are few and many people live in poverty, they need the means to do that. Our Septic Replacement Program is a good example of that. CWC pays to replace failed residential septic systems which treated water quality—which threaten water quality. This helps the homeowner who might not have $8,000 or $10,000 to put into a new system. It helps local contractors, employs laborers who do the repair work. And it helps the New York City water consumer by removing the possible health threat.

The same holds true for other Watershed Protection Programs. The salt storage sheds that have been built, the storm water control measures that have been installed, the stream rehabilitation projects that have been completed, all of them have helped the local economy, the municipalities on tight budgets, the businesses trying to meet watershed regulations, the homeowner who lives adjacent to the streams and the consumers at the other end of the pipe.

We are proud of the work we have done in the educational grants to schools and nonprofits in the watershed and in New York City. We have funded projects to help young people understand the im-

portance of preventing pollution and conserving water. They have explored the history of the watershed and the amazing New York City water system, and they have linked up-State and down-State students who will become the stewards of this water system just in a few years from now.

Since the MOA was signed 7 years ago, we have helped new businesses open, assisted revitalization efforts to improve our main streets, promoted the region so that more tourists are visiting our beautiful land, eating at our local restaurants and staying in our motels and inns. There are fewer for-sale signs on our homes and businesses, as people decide to move to and stay in the area because of its clean environment and improving economy.

We have become more aware that water quality protection is everybody's business, and it is economic development in the Catskills.

In essence, we produce clean water. We ask you to continue to be an active player in this effort by reauthorizing H.R. 2771 and funding the research, monitoring and educational programs that are an important element of the work we are doing in the New York City watershed.

[The prepared statement of Alan Rosa follows:]

PREPARED STATEMENT OF ALAN ROSA, EXECUTIVE DIRECTOR, CATSKILL WATERSHED CORPORATION

Good Morning. It is a privilege to speak with you today about the Catskill Mountains, an area that I call home, and a region that has supplied pure water to millions of New Yorkers for almost a century.

First, a little personal background. I have lived my whole life in the Dry Brook Valley near Arkville in Delaware County, New York, in the middle of the Catskill Park. My family has lived in this area for the better part of 200 years. My father was a Forest Ranger with the State Conservation Department, and our home is surrounded by "Forever Wild" Forest Preserve lands. Naturally I grew up with a love of the outdoors and of hunting and fishing. There is still nothing I would rather do than take my fly rod to the East Branch of the Delaware River and try to outsmart a trout or two.

I was an accountant and small business owner before I was elected supervisor of the Town of Middletown in 1990, the year the New York City Department of Environmental Protection released its draft Watershed Protection Program. Three months after I took office, I became involved in organizing the Coalition of Watershed Towns, which included representatives of 50 towns and villages in the 1600-square-mile Watershed west of the Hudson River. We were very concerned about the proposed regulations, and their effect on farms and communities. We worried that the rules would threaten our very survival.

Our biggest worry was that the City would have the power to condemn private property in order to acquire land to keep it undeveloped. This was one of the biggest reasons I became so involved in the effort to negotiate a fair deal for upstate communities. Several of my relatives were displaced when the City built its reservoirs in the Catskills. I did not want my family's painful experience to be repeated. I was afraid that the proposed regulations, and the City's land acquisition plans, would mean that my children, and my neighbors' children, would have no opportunity to live, and make a living here, as their ancestors had.

We talked and debated and argued for four years, trying to figure out how the City could avoid building a budget-busting filtration plant, while not suffocating commerce, or imposing the costs of added regulations onto local residents, businesses and municipalities. This was a challenge, to put it mildly. Not long after George Pataki took office as Governor in 1995, he appointed his chief counsel to mediate an agreement. That fall we had a conceptual agreement between the Coalition and the City, and the final Memorandum of Agreement was signed in Albany in January of 1997. Among other things, it allows the City to buy, but not condemn, vacant land.

The EPA, which drove the Watershed Protection effort, was, and remains, a key player in the MOA.

The MOA established the Catskill Watershed Corporation to develop and implement a number of environmental protection and economic development programs, funded by the City. The CWC board of directors, which includes 12 elected officials from 5 counties, along with city, state and environmental representatives, elected me its first president. I became executive director in 1998.

This new relationship between the upstate communities and the City could be called a shotgun marriage. Our shared history is not a happy one, and we still argue now and again. But the MOA has given us a framework to deal with difficult issues as equal partners, on a level playing field. The bottom line is: We all want clean water. Those of us who live in the Watershed take the first drink, after all.

I believe that basically, people want to do the right thing and protect this critical resource. But in our area, where opportunities are few and many people live in poverty, they need the means to do that. Our septic replacement program is a good example—the CWC pays to replace failed residential septic systems which threaten water quality. This helps the homeowner, who might not have eight or ten thousand dollars to put in a new system. It helps local contractors and employs laborers who do the repair work. And it helps New York City water consumers by removing a possible health threat.

The same holds true for other Watershed programs: The salt storage sheds that have been built, the stormwater control measures that have been installed, the stream rehabilitation projects that have been completed. All of them have helped the local economy—the municipalities on tight budgets, the businesses trying to meet Watershed regulations, the homeowners who live adjacent to streams, and the consumers at the other end of the pipe.

We are also proud of the work we have done in the education field. Grants to schools and non-profits in the Watershed and in New York City have funded projects to help young people understand the importance of preventing pollution and conserving water. They have explored the history of the Watershed and the amazing NYC water system. And they have linked upstate and downstate students who will become the stewards of this water system just a few years down the road.

Since the MOA was signed seven years ago, we have helped new businesses open, assisted revitalization efforts to improve our Main Streets, promoted the region so that more tourists are visiting our beautiful mountains, eating in the local restaurants, and staying at motels and inns. There are fewer For Sale signs on homes and businesses now, as people decide to move to, and stay in this area because of its clean environment and improving economy.

We have become more aware than ever that water quality protection is everybody's business. And that it IS economic development in the Catskills. In essence, we produce clean water. We ask you to continue to be an active partner in this effort, by reauthorizing HR 2771 and funding the research, monitoring and education programs that are important elements of our work in the New York City Watershed.

Thank you.

Mr. GILLMOR. Thank you.

And Mr. Olson?

STATEMENT OF ERIK D. OLSON, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

Mr. OLSON. Thank you, Mr. Chairman. The Natural Resources Defense Council is a New York-based organization; although we are a national organization. And we want to emphasize how important we think that it is.

It has been decades we have fought to protect the New York City watershed. It is a national treasure that deserves vigorous protection.

In addition, it is important we are talking about 2,000 square miles of watershed that has had considerable progress made over the recent years, but significant threats do remain.

In addition, the watershed program is an unprecedented effort. The State, the city, up-state communities and environmentalists have worked hard on the watershed agreement.

In addition, the funds that have been expended so far under this program have been very well spent, including sophisticated computer systems, advanced GIS data bases, stream-bank stabilization, demonstration projects and comprehensive assessments of streams. We think continuation of this program at full funding is essential to protection of the city's watershed and drinking water quality.

In addition, we think H.R. 2771's important goals of reauthorizing Section 1443 are important, and we support them. Funding for this innovative program is something that we support.

It is critical to the long-term safety of half of the population of New York State. In addition to this important issue in New York State, we think it is also important for this committee to look at, as several Members of the committee have already raised, the big picture of the national problem with drinking water.

There are several now obvious problems with the Safe Drinking Water Act. There are other programs that have not been authorized—reauthorized, including the basic backbone of the statute, the drinking water standards, research, the studies, operator certification, capacity, development, technical assistance, State programs for sole-source aquifers, State programs for wellhead protection, drinking water supply supervision programs and the list goes on.

But importantly the State Resolving Fund, $1 billion, has now had its authorization expire last year. There is an ongoing crises with lead in the drinking water not only here in DC but across the country. The tap water sitting on this table may have lead in it, and thousands of people in this city have been told it is not safe to drink their water.

In addition, arsenic the rocket fuel perchlorate, atrazine and numerous other contaminants are found in drinking water supplies across the country.

EPA has issued no new drinking water standards in 8 years. The Drinking Water Enforcement Program has plummeted in the last 3 years under this Administration. And the Inspector General has said there are serious problems with tracking compliance. And finally, we have a $500 billion drinking water infrastructure problem in this country that needs to be addressed by this committee.

So I am trying to be brief, but I will say in summary, that we do urge you to fully fund the New York City Watershed Protection Program. It is an important item, and we support H.R. 2771.

However, we urge that this committee will take expedited steps to address the many other important programs that are relevant under the Safe Drinking Water Act that are now expired, that are intended to protect 260 million people across this country. We really need to look at the big picture. And again, we do support the legislation that the committee is considering.

Thank you.

[The prepared statement of Erik D. Olson follows:]

PREPARED STATEMENT OF ERIK D. OLSON, SENIOR ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL

INTRODUCTION

Thank you for the opportunity to testify. I am Erik D. Olson, a Senior Attorney with the Natural Resources Defense Council (NRDC), a national non-profit public interest organization dedicated to protecting public health and the environment,

with over 500,000 members.[1] I also am Chair of the Campaign for Safe and Affordable Drinking Water, an alliance of over 300 medical, public health, nursing, consumer, environmental, and other groups working to improve drinking water protection, and serve on the steering committee of a new organization called Lead Emergency Action for the District (LEAD), a coalition of local and national civic groups, environmental, consumer, medical, and other organizations and citizens urging a stronger public response to the D.C. lead crisis. I testify today only on behalf of NRDC.

NRDC strongly supports continued funding for this watershed program, which we believe is a national model. At the same time, we believe that it is critical for Congress to also address the pressing nationwide funding needs of the SDWA, including reauthorization of the full State Revolving Fund and many other expired authorizations in the Act.

In my testimony today, I will first highlight NRDC's reasons for supporting continued full funding for the New York City Watershed protection Program and then summarize our concerns regarding the importance of reauthorizing nationwide funding and of, reviewing problems with, all of the important provisions of the Safe Drinking Water Act.

THE NEW YORK CITY WATERSHED

NRDC Supports Funding for the New York City Watershed Protection Program

As you may know, NRDC was incorporated as a not-for-profit organization in New York State and our principal offices have been located in New York City since the organization's founding in 1970. For more than three decades, NRDC lawyers and scientists have devoted significant efforts to protecting environmental health and natural resources in and around the nation's largest city. A long-standing priority for us in this region has been to protect the New York City water supply, which provides drinking water to nine million downstate New Yorkers, primarily in New York City and nearby Westchester County.

Over the years, NRDC staff have, among other things, advocated for comprehensive watershed protection programs, brought successful litigation to force the establishment of water pollution limits for the City's 19 upstate reservoirs and joined with city and state officials to support filtration avoidance for New York's Catskill and Delaware water systems, pursuant to the Safe Drinking Water Act and EPA's implementing regulations, the Surface Water Treatment Rule. See 42 U.S.C. § 1412, 40 C.F.R. Section 141.71. This New York water system is the region's critical lifeline, supplying water to half the state's population as well as millions of tourists and visitors every year. For this and many other reasons, safeguarding the New York City water supply, including the 1.2 million acres of watershed lands that drain into the New York reservoirs, has been one of NRDC's paramount objectives in New York.

Because of the historically high quality of New York's Catskill and Delaware supplies, New York City applied for a waiver from the U.S. EPA from the requirement that the city construct filtration facilities, as otherwise required by the Safe Drinking Water Act and its implementing regulations. NRDC supported this request, based upon the city's tap water from these systems meeting all federal and state standards and upon our conviction that long-term water quality would be further enhanced by New York's implementation of a vigorous program to protect the New York water supply at its source via cost-effective watershed protection. Based upon New York City promises to implement such a program, EPA granted the city several filtration avoidance waivers during the early 1990s. But some of the programs proposed by New York City, such as updating its watershed rules to restrict polluting activities on upstate watershed lands, proved to be controversial. And full scale implementation of a comprehensive watershed protection measures was delayed.

In 1997, Governor George Pataki, Mayor Rudolph Giuliani and upstate watershed elected officials signed a memorandum of understanding, in which the parties agreed to advance various watershed protection measures, to provide funding for environmentally sound economic development within watershed communities and to work together in the future on their mutual interests in safeguarding this irreplaceable watershed, its residents and the health of the public who rely on it for their drinking water. The program included literally hundreds of measures, including city funding to pay for upgrades to sewage plants discharging treated wastewaters in the watershed, for septic system inspections and repairs, and for the purchase, in

[1] Eric Goldstein, an NRDC Senior Attorney in New York and nationally-recognized leader in the effort to protect the New York City water supply, substantially assisted in the development of this testimony.

willing buyer, willing seller transactions, of undeveloped—watershed lands. NRDC viewed the 1997 watershed agreement as a good first step, while recognizing that enormous challenges remained ahead, including implementation of the agreement itself as well as such issues as the continued threat from sprawl development and other pollution-generating activities.

Over the past seven years, NRDC has closely monitored the implementation of this program, and can report that progress has been made. Many of the more than 100 sewage plants located throughout the watershed have been upgraded. Well over 1,000 septic systems have been repaired or replaced. And New York City has purchased over 50,000 acres of watershed lands from willing sellers in the upstate watershed region. Based upon such progress, the USEPA renewed New York City's filtration avoidance waiver in 2002, granting another five year extension until 2007. The filtration avoidance waivers that EPA has granted have provided the impetus for all of the parties to concentrate their efforts on watershed protection and pollution prevention. Indeed, New York City has already committed to spend 1.6 billion dollars to advance it watershed protection and related programs. This is, of course, a cost-effective investment, since the price tag for building a filtration plant for the one billion gallon a day Catskill and Delaware system is more than 6 billion dollars in capital costs alone.

Despite this success, the New York City's watershed protection program faces major challenges. The pace of sprawl has not abated, increasing the amount of paved surfaces on watershed lands that were formerly—meadows and forests. Several large development projects threaten to suburbanize portions of this still mostly rural Catskill and Delaware watershed. And historic problems such as turbidity in streams that feed several reservoirs have yet to be fully addressed. In short, it is more important than ever that New York City, New York State and the upstate watershed communities expand their efforts to safeguard this watershed via cost-effective pollution prevention measures.

The New York City Watershed Protection Program that is the subject of today's hearing is a small but essential part of the unprecedented cooperative effort that New York's upstate and downstate officials are making to safeguard the nation's largest municipal drinking water supply. The program authorizes financial assistance for New York Sate funding of demonstration projects in two major categories—monitoring and surveillance of watershed protection projects, and projects necessary to comply with the federal criteria for avoiding filtration set forth in 40 C.F.R. 141.71.

Over the years, the funds from this program have been well spent. For example, the funds assisted New York City in providing computers with sufficient capabilities to handle the enormous amount of pollution data that was being generated, but which was not being adequately tracked and tabulated. In addition, the funding helped New York Sate create a new, complex GIS data base so that modeling assessments throughout the 2,000 square mile Catskill and Delaware watersheds could be better performed. Third, the funds have been used to monitor streambank stabilization and restoration projects and to determine the impacts of local pesticide use on stream water quality. And an independent consultant has also been hired using these funds to conduct a detailed assessment of watershed streams, to assess among other things their capacity to assimilate pollutants, so as to retain the purity of waters entering into the upstate reservoirs themselves.

To be sure, the federal funding program we are discussing today is quite small in comparison to the well over a billion dollars that New York water ratepayers are paying to implement their watershed initiative. (From 1997 to 2002, a total of $26 million dollars in Safe Drinking Water Act funds were appropriated for the New York City Watershed Protection Program.) But a continuation of this program, at full funding, is essential to the long-term success of the overall effort, and to the retention of the federal government as a partner in this nationally significant watershed protection demonstration program. Accordingly, we urge that you reauthorize the New York City Watershed Protection Program and provide full funding for New York State to implement this innovative clean water initiative through the year 2010.

THE NEED FOR A COMPREHENSIVE REAUTHORIZATION OF THE SDWA

While it is of course important that Congress reauthorize the provision in section 1443(d)(4) of the SDWA that authorizes the New York City watershed protection demonstration program, it is important that such a reauthorization come as part of a comprehensive review and reauthorization of the SDWA as a whole. The 1996 SDWA Amendments created and authorized numerous new drinking water pro-

grams, and revised and reauthorized many existing programs, but these authorizations expired in 2003.

Among the important authorizations that expired in 2003 are:

- **Drinking Water Regulations.** The heart of the SDWA's drinking water program, section 1412 authorizes $35 million/year for studies and analyses to support the standard-setting program for establishing national primary drinking water regulations to protect public health.
- **Operator Certification.** This program established in section 1419 by the 1996 SDWA Amendments, authorizes $30 million/year for EPA grants to states to run programs to ensure the proficiency and certification of drinking water system operators.
- **Capacity Development.** Another program established by the 1996 Amendments (section 1420), authorizes $5 million/year for small system technology assistance grants and $1.5 million/year for the small system capacity development program.
- **Sole Source Aquifer Demonstration Program.** The sole source aquifer program in section 1427 authorizes $15 million/year for grants to protect underground aquifers that are the sole or primary source of drinking water for a region against contamination.
- **State Wellhead Protection Programs.** Section 1428 authorizes $30 million/year for states to develop and implement wellhead protection programs to defend public water supply wells against contamination.
- **State Ground Water Protection Grants.** The 1996 Amendments authorized, in section 1429, $15 million/year in grants to states to develop and implement state programs to ensure coordinated and comprehensive protection of ground water resources.
- **Technical Assistance to Small Water Systems.** Section 1442(e) authorizes $15 million/year in funding to assist small systems to achieve and maintain compliance with national primary drinking water regulations.
- **State Grants for Public Water System Supervision Programs.** Section 1443(a)(7) authorizes $100 million/year in grants to states to run their drinking water programs to supervise the safety of public water systems.
- **State Grants for Underground Injection Control Programs.** Section 1443(b)(5) authorizes $15 million/year to carry out their underground injection control programs that regulate activities such as injection of millions of gallons of hazardous waste underground.
- **New York City Watershed Protection Program.** As noted above, section 1443(d) authorizes $15 million/year for demonstration projects to protect the city's watershed.
- **National Assistance Program for Water Infrastructure and Watersheds.** The 1996 Amendments unconditionally authorized $25 million/year (and authorized another $25 million/year in any fiscal year for which the State Revolving Fund is 75% funded) for grants to states to provide technical and financial assistance for the construction, rehabilitation, and improvement of public water systems and for source water protection programs, in 42 U.S.C. § 300j-3c.
- **Records, Inspections, and Monitoring.** The SDWA also authorizes $10 million/year for monitoring for levels of unregulated contaminants in drinking water, in § 1445(a)(2).
- **State Revolving Fund.** The biggest expired authorization is $1 billion/year for the drinking water State Revolving Fund, which was established in section 1452 to provide states funds to operate revolving funds that finance loans (and limited grants to disadvantaged communities), to facilitate compliance with EPA drinking water rules or to significantly further health protection objectives of the SDWA.
- **Source Water Petition Program.** Section 1454 authorizes $5 million/year for grants to states to carry out programs under which water systems or municipalities may submit a petition to get funding for source water protection programs.
- **Drinking Water Studies.** Section 1458 authorizes $12.5 million/year for studies of waterborne disease, health effects of contaminants on pregnant women, infants, children, the elderly, and other vulnerable populations, and other important issues regarding the potential impacts of drinking water contaminants on public health.

Thus, it is clear that there are many important drinking water programs whose authorizations have expired, and that deserve Congressional review and, we believe, generally also deserve reauthorization.

THE NEED FOR REVIEW OF PROBLEMS WITH THE SDWA

In addition to the need for reauthorization of these provisions of the Act, we strongly believe that Congress needs to review how the SDWA is working. We are deeply concerned about many aspects of state and EPA implementation of the SDWA. For example, as the lead crisis that has erupted in the past two months in Washington D.C. illustrates, EPA's and many water and school systems' lead in drinking water programs are manifestly inadequate. In addition, as discussed below, there are numerous other problems with EPA's and states' implementation of the SDWA, including EPA's failure since the 1996 SDWA Amendments to issue or even propose any new standards for contaminants that were not explicitly mandated by Congress despite strong evidence that many unregulated contaminants foul the tap water of tens of millions of Americans. We briefly discuss some of these issues below.

Lead in Drinking Water

The local drinking water lead crisis poses serious public health risks to thousands of residents of the national capital area, and casts a dark shadow of doubt over the ability, resources, or will of federal and local officials to fulfill their duty to protect our health. EPA has the primary responsibility for protecting drinking water only in Washington D.C., Wyoming, and a few U.S. territories. However, EPA has failed to fulfill its obligation to aggressively oversee the safety of D.C.'s water supply, to ensure that the public is fully apprised of the health threats posed by our drinking water, and to enforce the law. This raises important questions about the adequacy of EPA's drinking water program not only for the Nation's Capital, but also for the whole nation. The U.S. Army Corps of Engineers' Washington Aqueduct Division (the Corps) has failed to treat the water it delivers to D.C. and neighboring Northern Virginia communities sufficiently to assure that the water is not corrosive, in order to reduce lead contamination. The D.C. Water and Sewer Authority (WASA) failed to act promptly or adequately on the lead contamination crisis, and repeatedly confused and mislead the public about the lead problem. To date, the local and federal response has been little short of an embarrassment. The nation's capital's water supply should be the best in the world, an international model. Instead, it is among the worst big city supplies in the nation.

However, it should not be assumed that Washington is the only city in the U.S. affected by lead or other important tap water problems. We are now learning of lead problems in Northern Virginia, and there are several other cities have struggled with lead contamination in recent years, including Seattle, communities in greater Boston, St. Paul, Minnesota, Bangor, Maine, Madison, Wisconsin, Ridgewood and Newark, New Jersey, Oneida, New York, and many others. However, EPA maintains no accurate up-to-date national information on this issue. Some of these cities will assert that they are now in compliance with EPA's lead action level despite recent documented problems, but EPA has done little to aggressively ensure that this is correct. School systems in many cities across the country including in Seattle, Boston, Baltimore, Philadelphia, Montgomery County, Maryland, and many others have found serious lead contamination problems, but often have been slow to inform parents and resolve the problem. Many school systems have entirely failed to comply with the Lead Contamination Control Act of 1988's mandate to test school water for lead and replace coolers that serve lead-contaminated water. EPA and many states have done a poor job of assuring that the EPA lead rule, and the school testing and cooler programs are fully implemented. National drinking water databases that Congress and EPA rules mandate are incomplete and out of date. EPA has acknowledged that there are major problems with state reporting of all violations and specific lead levels to EPA, but has failed to crack down on states that are not complying with federal reporting rules, making effective EPA oversight and enforcement impossible. Moreover, the Washington crisis and experience in other cities highlight that the EPA lead rule and public education requirements are almost designed to be difficult to enforce.

Among the actions that we believe Congress should take to address problems raised by the lead crisis are:

- **Water Infrastructure or Grants/Trust Fund Legislation**
  - Congress should substantially increase the SDW SRF authorization and appropriations (now funded at $850M; authorization of $1B expired in 2003)
  - Congress should adopt broad water infrastructure bill and/or water infrastructure trust fund legislation.
  - Congress should adopt targeted legislation for lead rule compliance/lead service line replacement and filters for D.C. residents at least, since the federal government approved and oversaw the installation of the lead lines.

- The Corps of Engineers should pay for D.C. lead service line replacement since Corps built the system, and operates the treatment plant that is providing corrosive water. Also, federal agents approved and sometimes required lead lines.
- Congress should adopt new legislation that provides grants to needy water systems, like Reid-Ensign bill (S. 503, 107th Congress).

- **Fix Lead Pipe and Fixtures provision in the SDWA**
  - Congress should redefine "Lead Free" in SDWA § 1417(d) to mean really lead free (i.e. no lead added, and no more that 0.1 to 0.25% incidental lead—as required by L.A., Bangor Maine, etc.)
  - Congress should fix the public notice provisions in SDWA § 1417(a)(2), which clearly have been inadequate (as shown by the D.C. experience)
- **Fix the SDWA lead in schools and day care provisions (SDWA §§ 1461-1463)**
  - Congress should redefine lead free in the Lead Contamination Control Act (LCCA), which added SDWA § 1461, to mean really lead free (See above)
  - Congress should order an EPA review of § 1462 implementation and effectiveness of lead fountain recall provision in all states
  - Congress should clarify §§ 1461-63 to eliminate any constitutionality doubts raised by *Acorn v. Edwards,* 81 F.3d 1387 (5th Cir. 1996).
  - Congress should require ongoing retesting of all schools and day care centers in light of Acorn and widespread non-compliance, and new info on lead leaching.
- **Fix the EPA Lead Rule & Associated Regulations**
  - Adopt a 10 or 15 ppb MCL at the tap. There was an MCL (50 ppb) until 1991.
  - As a clearly second-best alternative, the rule needs serious overhaul:
    - Require immediate review of corrosion control programs for systems that make treatment changes, and also require review periodically;
    - Change monitoring requirements so systems cannot go for years without testing, and to clarify and strengthen test methods, site selection, and number of tests (50 or 100 per city are not enough);
    - Strengthen/overhaul public education and public notice requirements in 40 CFR 141.85 which are obviously inadequate;
    - Require full lead service line replacement, or at a minimum require that water systems that approved, authorized, or required use of lead service lines to replace those lines if they are contributing to lead over action level;
    - Require in-home certified filters to be provided to high-risk people who have high lead levels, with water system-supplied maintenance in accordance with 40 CFR 141.100;
    - Require an overhaul/upgrade of EPA's compliance & data tracking.
- **Fix the Consumer Confidence Report & Right to Know Requirements**
  - WASA's report said on the cover "Your Drinking Water is Safe" and buried the facts. No one knew of the problem. Similar problems have been documented for water systems across the country. EPA's right to know and consumer confidence report rules need to be overhauled & strengthened.
- **Fix SDWA Standards Provisions**
  - Congress should require that standards to protect pregnant women, children, vulnerable people.
  - Congress should overhaul the new contaminant selection & six year standard review provisions. These provisions have been complete failures since 1996.

Dropping Drinking Water Enforcement and Poor Violations Tracking

As is shown in the graphs at the end of this testimony, drinking water enforcement, which has never been strong, has seriously dropped in the past three years under the Bush Administration. For example, regional drinking water inspections have dropped by 50% in those three years, and several other key indicators show that drinking water enforcement has dropped.

In addition, the EPA Inspector General recently issued a stinging indictment of EPA's and states' failure to adequately track violations in the national drinking water database, making adequate EPA oversight of drinking water compliance all but impossible. The inspector general's report[2] cited numerous claims by EPA internal reports over the past four years, and more recently in several public statements by senior Bush administration EPA officials in 2003 and 2004, that incorrectly "portrayed [EPA's] success at improving drinking water quality." For example, several of the statement incorrectly claimed that 94 percent of the U.S. population served by community water systems drinks water that meets EPA health standards (IG re-

[2] EPA Inspector General's Office, "EPA Claims to Meet Drinking Water Quality Goals Despite Persistent Data Quality Shortcomings," Report 2004-P-0008 (March 5, 2004) available online at http://www.epa.gov/oig/reports/2004/20040305-2004-P-0008.pdf

port, p. 3). Rarely were adequate or prominent caveats included that would have made clear that these data were well known to substantially overstate compliance rates, the IG found. The inspector general noted that these incorrect claims were repeated in the media, including by a June 23, 2003, New York Times editorial that cited the purported improvement in tap water safety (IG report, p. 3).

Data from both EPA audits and the inspector general show that the claimed 94 percent compliance rate is a gross overstatement of the actual rate. Although no one knows the precise compliance rate, the inspector general found that the EPA is fully aware that these public claims substantially overstate actual drinking water compliance. In fact, EPA data audits show that about 77 percent of known monitoring and reporting violations, and 35 percent of known health standard violations, are not included in EPA's compliance database (IG report, p. 5). In addition, the inspector general's report pointed out—and EPA documents acknowledge—that many of these monitoring and reporting violations likely are "masking" health standard violations (IG report, p. 4). Like EPA's own audits, the inspector general's review of data for 761 water systems confirmed substantial underreporting of all types of violations (IG report, p.7).

This data problem makes it all but impossible for EPA to effectively oversee and enforce compliance with the SDWA. We strongly urge Congress to conduct oversight hearings on this issue, and to mandate changes in EPA's and states' data collection, reporting, and other programs to remedy these and other problems with the drinking water program.

Other Important SDWA Implementation Issues Deserving Congressional Review

We will not attempt to provide an exhaustive list of all of the other issues that Congress should address in reviewing the SDWA, but among the most important are:

- **Standard Setting.** EPA's implementation of the standard setting provisions has been problematic. Standards adopted have not been fully health protective of vulnerable populations. For example, the National Academy of Sciences reviewed EPA's new arsenic in drinking water standard and found that EPA had underestimated by about tenfold the cancer risks posed by arsenic, and therefore had clearly substantially underestimated the benefits of the standard. EPA refused to reduce the standard in response, even though it had set the standard at 10 ppb—well above the feasible level of 3 ppb—because it said the benefits of a 3 ppb were inadequate to justify that standard. The entire cost-benefit approach has lead to inaction, weaker standards, and delays. EPA also has missed numerous statutory deadlines in the 1996 Act to set new standards for disinfection byproducts, *Cryptosporidium,* radon, and groundwater disinfection.
- **New Contaminant Selection and Regulation.** The 1996 SDWA Amendments eliminated a provision in the statute that required EPA to set 25 new standards every 3 years, and replaced it with a measure in section 1412 requiring EPA to decide whether to set standards for five new contaminants every five years. To date, nearly eight years later, EPA has not set a single new standard—or even proposed to start adopting one—under this provision. This despite the presence of some contaminants at risky levels in millions of Americans' tap water. For example, over 20 million Americans drink water that contains the rocket fuel perchlorate at a level in excess of EPA's draft safety level called a Drinking Water Equivalent Level (DWEL), yet EPA has refused to even start the regulatory process for this or any other new contaminant under this provision.
- **Six-Year Review.** EPA completed its most recent six-year review by ignoring all pleas to update all standards, including suggestions that the drinking water office follow the pesticide office by regulating certain families of pesticides that contaminate drinking water as a class. The only exception is that EPA has said it will consider reviewing the total coliform rule—in 2006, 10 years after the law was enacted. The water industry has advocated for this review.
- **Drinking Water Affordability.** We believe that a program to assist low-income consumers pay for their water bills, similar to the Low Income Heating and Energy Assistance Program (LIHEAP), should be adopted.
- **Right to Know and Right to Understand Requirements.** The national experience with consumer confidence reports and other right to know measures in the SDWA has taught us that these provisions need to be substantially strengthened and enhanced with measures that require more outreach and public education.
- **National Contaminant Occurrence Database (NCOD).** The requirement in section 1445(d) that EPA establish a national database for public use on the occurrence of regulated and unregulated contaminants in their drinking water

has fallen far short of the mark. The NCOD established so far is a patchwork of data that is so incomplete that it is virtually impossible for EPA and citizens to use to get comprehensive or up-to-date information on local or national drinking water.

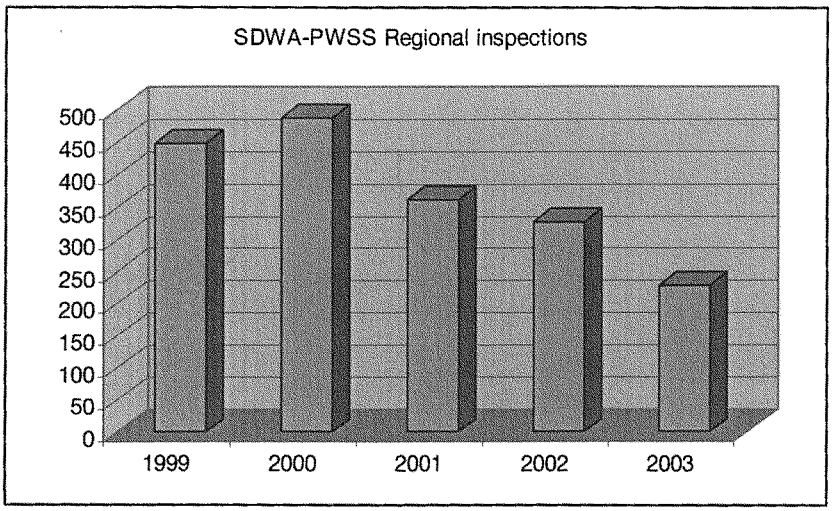
- **Source Water Protection.** The SDWA programs for source water protection have been a bitter disappointment. The law should be overhauled to require strong, enforceable source water protection measures for both groundwater and surface water.
- **Drinking Water Security.** Although the Bioterrorism law required vulnerability assessments for many drinking water systems, much more needs to be done to both strengthen and implement the security status of drinking water supplies. The public needs to be brought into the process to assist water utilities to educate consumers about what to do in the event of a problem or observed suspicious activity, and to have the opportunity to recommend steps that could better protect their communities through the adoption of inherently safer technologies. While of course public involvement in some aspects of this program will of necessity be limited, we believe that the public should have a place at the table in the efforts to improve protection of their water supplies.
- **Polluter Pay Provisions.** We believe that the SDWA should be amended to make it clear that polluters who contaminate drinking water supplies must pay to clean up those supplies—rather than forcing consumers to foot the bill.
- **Bottled Water and Filter Protections and Right to Know.** Strong measures are needed in the SDWA to require bottled water companies to fully disclose contaminants found in their water on the labels, to improve monitoring, regulation, and oversight. and to expand right to know requirements. In addition, we need objective national standards, testing, certification, and right to know requirements for home filters.
- **Waterborne Disease Surveillance and Health Tracking.** There should be a national mandatory program for waterborne disease surveillance and health tracking, with adequate funding.
- **Water Infrastructure, and Public Control of Water Assets.** As noted earlier in this testimony, we strongly believe that comprehensive water infrastructure legislation, that helps with significant additional funding to refurbish and upgrade our drinking water treatment and distribution systems, consistent with smart growth and water conservation principles, is urgently needed. Inherent in any legislation should be the important concept that the public must maintain full control of all water assets.

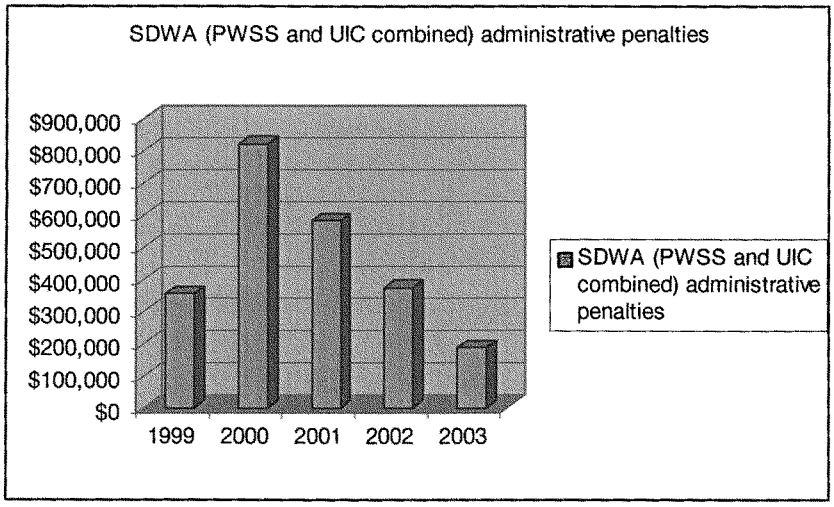
CONCLUSION

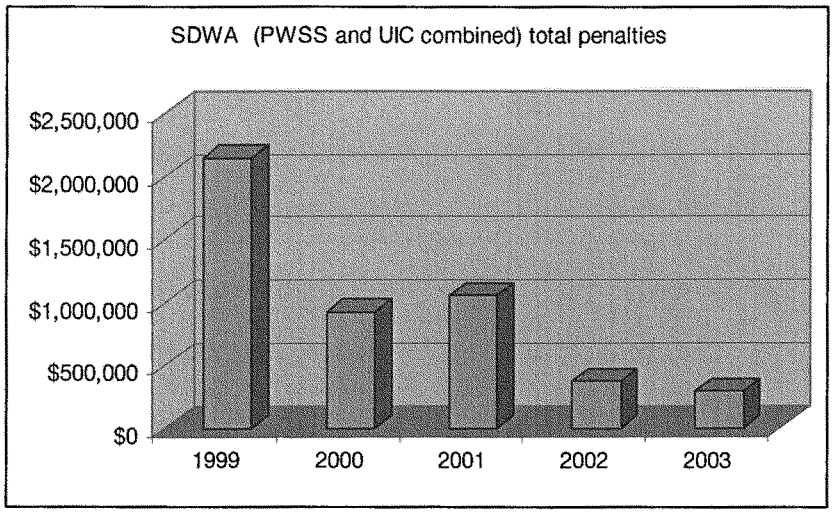
NRDC supports reauthorization and full funding for the New York Watershed protection program. We believe that such reauthorization and funding should be part of the comprehensive review and reauthorization of the SDWA.

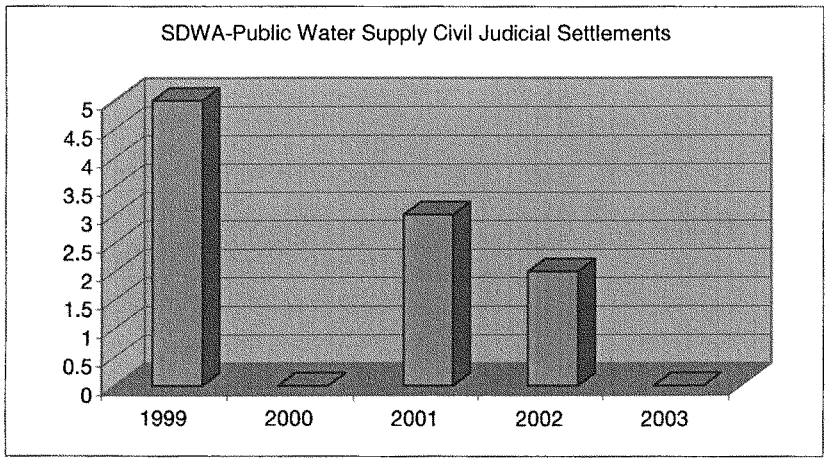
RECENT TRENDS IN EPA DRINKING WATER ENFORCEMENT

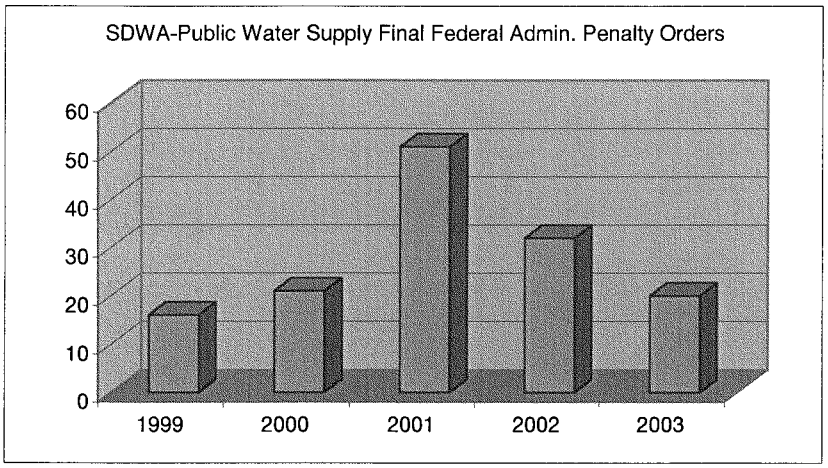
Source: EPA Data, 2004

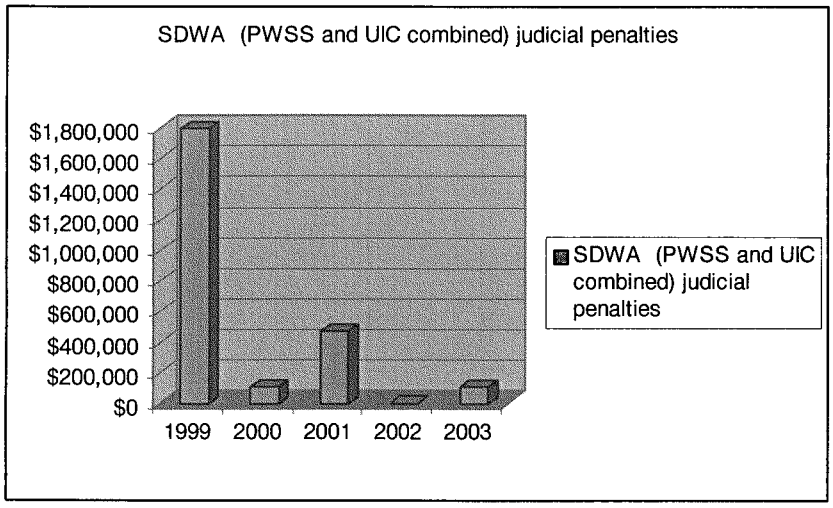


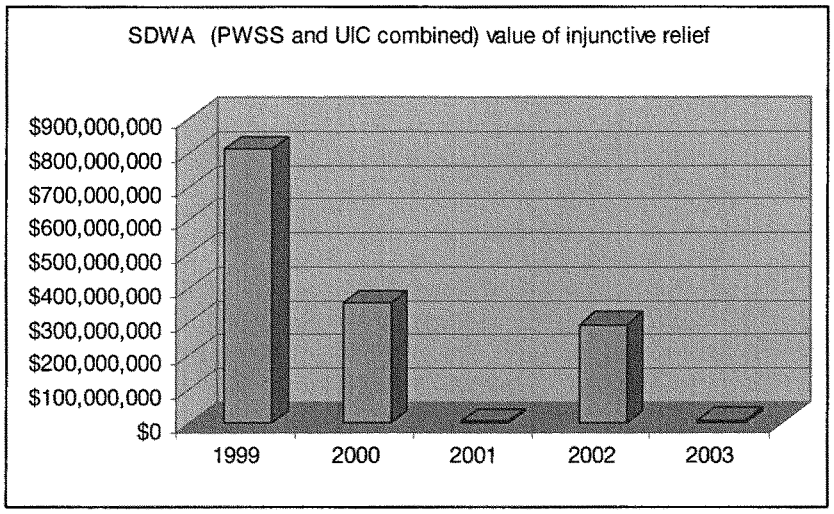


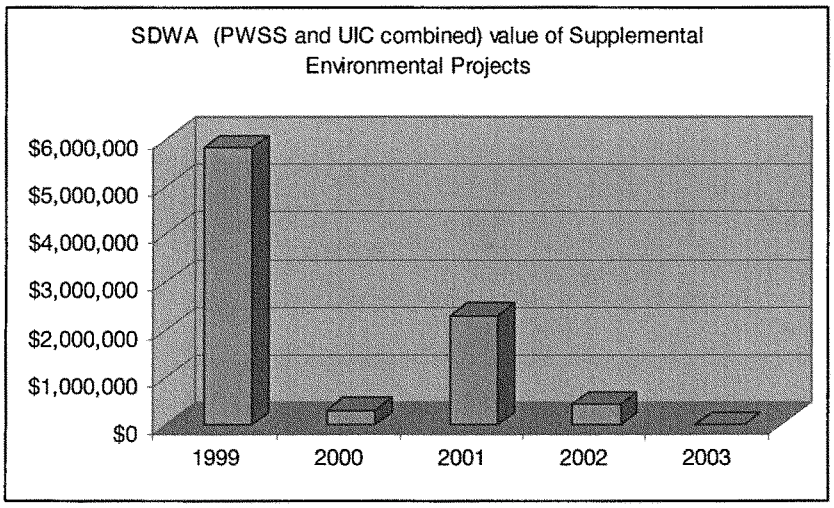

SDWA (PWSS and UIC combined) total penalties
$2,500,000
$2,000,000
$1,500,000
$1,000,000
$500,000
$0
1999
2000
2001
2002
2003

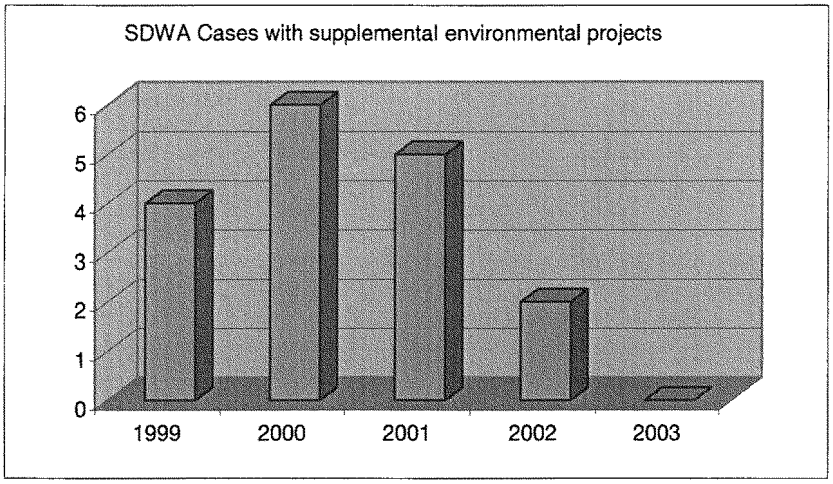

SDWA-Public Water Supply Civil Judicial Settlements
5
4.5
4
3.5
3
2.5
2
1.5
1
0.5
0
1999
2000
2001
2002
2003


SDWA-Public Water Supply Final Federal Admin. Penalty Orders
60
50
40
30
20
10
0
1999
2000
2001
2002
2003


SDWA (PWSS and UIC combined) judicial penalties
$1,800,000
$1,600,000
$1,400,000
$1,200,000
$1,000,000
$800,000
$600,000
$400,000
$200,000
$0
1999
2000
2001
2002
2003
SDWA (PWSS and UIC combined) judicial penalties


SDWA (PWSS and UIC combined) value of injunctive relief
$900,000,000
$800,000,000
$700,000,000
$600,000,000
$500,000,000
$400,000,000
$300,000,000
$200,000,000
$100,000,000
$0
1999
2000
2001
2002
2003


SDWA (PWSS and UIC combined) value of Supplemental Environmental Projects
$6,000,000
$5,000,000
$4,000,000
$3,000,000
$2,000,000
$1,000,000
$0
1999
2000
2001
2002
2003



Mr. GILLMOR. Thank you very much, Mr. Olson.

Are there questions of this panel?

Gentlelady from Illinois?

Ms. SCHAKOWSKY. I will yield.

Ms. SOLIS. Thank you, Mr. Chairman.

I have a question for Mr. Mugdan. I would like to ask you, why didn't President Bush include in his fiscal year 2005 budget for the Safe Drinking Water Program, why did it not include any funding for section 1443(d), the New York Watershed Demonstration Project?

Mr. MUGDAN. Congresswoman, I am here as a regional witness. My expertise is in discussing EPA's role in protecting New York City's drinking water supply, and therefore, my testimony focuses on the issues associated with implementation of our filtration avoidance determination.

To date, the Administration has not taken the position on this bill H.R. 2771. And as you have heard, no Administration has requested funding under this provision of the Safe Drinking Water Act. That is probably the most information I can provide you.

Ms. SOLIS. Why have they not taken a position? Why has the Administration not taken a position?

Mr. MUGDAN. That is beyond my area of expertise.

My expertise is with respect to implementing the Safe Drinking Water Act on the ground in our region of the country.

Ms. SOLIS. Is this more important than reauthorizing the State Revolving Loan Fund, Section 1452, yes or no?

Mr. MUGDAN. I wouldn't be the right person to give you that answer. I am sorry.

Ms. SOLIS. Mr. Mugdan, are you saying that reauthorizing section 1443(d) to provide financial assistance to the New York watershed is more important than any other higher priority, than reauthorizing the other 13 provisions of the Safe Drinking Water Act?

Mr. MUGDAN. I am not making any statement about the relative priorities.

Ms. SOLIS. I have no more questions.

Mr. GILLMOR. Are there any other questions?

Gentlelady from Illinois?

Mr. Buyer?

Mr. BUYER. I just have one question. When you walked into this room today, you brought with you your intellect and your common sense, did you not?

Mr. MUGDAN. Yes, sir.

Mr. BUYER. Everybody agree in the affirmative? They all nodded their head in the affirmative.

Based on your intellect and your common sense, let us exercise it. Is there any rational basis that Congress should only authorize this program for 1 year?

Ms. CROTTY. I would say, no. I think the watershed agreement represents everything that Congress is trying to see happen at the State and local level, that it is a partnership of very diverse groups that came together and hammered out literally centuries of animosity toward a new way of protecting an unfiltered and a filtered drinking water supply that includes multiple barriers to protecting people's drinking water.

I think when we originally sought the authorization back in 1996, we thought 7 years was a good amount of time, because we really did have a 5-year review period built into the original agreement to make sure that we were doing the right thing, if you will.

So I think a 1-year authorization, while we would appreciate Congress taking note of the tremendous effort of the watershed agreement, obviously, we have proven that it is working. And so a longer authorization, I think, is much more appropriate.

Mr. BUYER. Does everyone agree with that statement?

Mr. ROSA. Yes.

Mr. BUYER. All nodded in the affirmative.

Mrs. CAPPS. Could my colleague yield?

Mr. BUYER. I yield back.

Mr. GILLMOR. Gentlelady from Illinois?

And we do have a vote on and we are running short on time and if you could do it as briefly as possible.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman.

Ms. Crotty, has the Governor submitted the 5-year report that is required by Congress?

Ms. CROTTY. Yes, we did.

Ms. SCHAKOWSKY. When was that?

Ms. CROTTY. I transmitted that report on March 31.

Ms. SCHAKOWSKY. That report was 2 years overdue, am I correct?

Ms. CROTTY. Actually, the legislation that required the 5-year report—and with all due respect, not trying to be cute about this—it says that the State needs to transmit a report to Congress about the progress of the watershed 5 years after we receive the money from the Administrator. And so actually, the timing is right on in terms of when we initially received the money from EPA.

Ms. SCHAKOWSKY. Thank you.

Mr. GILLMOR. Let me ask if the panel would be willing to answer some questions in writing if Members have some.

And also, I would like to dismiss this panel if we can, but if there are further questions that Members need to ask, we can.

Gentlelady from California?

Mrs. CAPPS. I want to make one comment that was actually in response to what our colleague from Indiana imposed in terms of his asking about common sense and is there any reason we would just ask for authorization for 1 year, but I wanted to ask him, on what basis he thought the Senate requested a 1-year authorization and Senator Inhofe led that recommendation?

And I guess that would be my question. There is not time to get an answer because I think there is a vote we need to tend to, but this makes it difficult when one side recommends one timeframe and another chamber recommends a very different timeframe.

I yield back.

Mr. GILLMOR. I might be able to answer. Senator Clinton offered the amendment, but the chairman of the committee said that he was committed to working for a longer reauthorization for the program next year. Beyond that, I can't explain anything that the Senate does.

Mrs. CAPPS. Is it correct that it voted out the 1-year?

Mr. GILLMOR. Yes, out of the committee. That is my understanding.

Is there any objection to dismissing this panel?

If not, thank you all very much.

I would ask the Members, we will reconvene 5 minutes after the last vote in the series.

[Whereupon, at 11 a.m., the subcommittee proceeded to other business.]

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