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DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

APRIL 15, 2008

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DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

TUESDAY, APRIL 15, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:45 p.m. in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Waxman, Cummings, Kucinich, Clay, Lynch, Norton, Sarbanes, Issa, Marchant, and Jordan.

Also present: Representative Van Hollen.

Staff present: Tania Shand, staff director; Lori Hayman, counsel; William Miles, professional staff member; Marcus A. Williams, clerk; Earley Green, chief clerk; Howie Denis, minority senior professional staff member; and Benjamin Chance and Chris Espinoza, minority professional staff members.

Mr. DAVIS OF ILLINOIS. The subcommittee will come to order.

The subcommittee would like to welcome Ranking Member Marchant, witnesses and all of those in attendance.

Ladies and gentlemen, welcome to the subcommittee's first D.C. Water and Sewer Authority [WASA], oversight hearing of the 110th Congress. It has been nearly 3 years since a hearing has been held on WASA and issues pertaining to the quality of the city's drinking water and environmental conditions.

Today's hearing will provide the subcommittee with the most current developments in WASA's operations, finances and infrastructure improvement efforts.

Given the presence of the Federal Government in the Washington, DC, area and the reliance on WASA for the provision of water-related services to the Federal Government, today's oversight hearing is a critical part of the processes for ensuring the continual and reliable delivery of safe drinking water and wastewater treatment services to area residents, businesses, Government agencies and certain suburban jurisdictions.

Since its creation as a quasi-independent regional utility agency in 1996, WASA has made significant progress in carrying out its statutory mandate of providing retail drinking water distribution, wastewater collection and wastewater treatment services to 570,000 District residential and commercial customers and providing wholesale wastewater treatment services to over 1.6 million

customers in Montgomery and Prince George's Counties through the Washington Suburban Sanitary Commission and Fairfax and Loudoun Counties and the city of Vienna, VA.

Over the past decade, WASA has invested over $1 billion in various infrastructure improvements, taken steps to guarantee the region's safe drinking water, attained a AA bond rating, and ensured that the Blue Plains Wastewater Treatment Plant operated in compliance with all permit requirements. In other words, we have come a long way from the boiled water alerts of the mid-1990's.

Despite the apparent progress WASA and its regional partners have made over the years, a number of issues, challenges, and concerns remain to be addressed.

First and foremost, the subcommittee looks forward to receiving an update on WASA's lead service line replacement program and possible alternative approaches to reducing the leakage of lead into the drinking water supply.

The Coalition of Parents for Non-Toxic Alternatives, the Alliance for Healthy Homes and Clean Water Action have pointed to ongoing shortcomings in WASA's management of the District's lead in water problem. I ask unanimous consent that their statement be entered into the record.

Without objection, so ordered.

[The information referred to follows:]

WRITTEN STATEMENT

OF

Yanna Lambrinidou, PhD, President, Parents for Nontoxic Alternatives
Ralph Scott, Community Projects Director, Alliance for Healthy Homes
Paul Schwartz, National Policy Coordinator, Clean Water Action
Andrew Fellows, Chesapeake Program Director, Clean Water Action

SUBMITTED TO THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON
FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

REGARDING
THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY AND
LEAD IN THE DISTRICT'S DRINKING WATER

15 April 2008

Lead in drinking water can pose a serious health risk to vulnerable populations, especially fetuses and young children. Urban communities around the country rely on their public water utilities for accurate information on lead at the tap and clear warnings when lead levels exceed federal standards. The system protecting public health from elevated levels of lead in drinking water presumes integrity in the water provider and state and federal regulators.

In Washington, DC, Parents for Nontoxic Alternatives, the Alliance for Healthy Homes, and Clean Water Action are members of a growing coalition of environmental and public health groups that have grave concerns about a) lead concentrations in the District's drinking water, b) the District of Columbia Water and Sewer Authority's (DC WASA) trustworthiness in protecting public health from preventable exposure to lead at the tap, and c) Environmental Protection Agency (EPA) Region III's "state" oversight, otherwise known as Primacy. The groups' concerns are based on extensive local and federal documents obtained through Freedom of Information Act (FOIA) requests that call into question whether DC WASA's 2005-2007 compliance with the EPA Lead and Copper Rule is a deception. In summary:

I. DC WASA touts its compliance with EPA regulations as proof that the problem of lead in DC water has been solved. However, evidence obtained through FOIA requests suggests that lead in the District's drinking water is a persistent and inadequately addressed problem.

- Since the lead-in-water crisis of 2004, several independent sources have documented DC WASA's manipulations of testing protocols and data to ensure compliance with EPA law (e.g., Covington and Burling Report 2004; Environmental Protection Agency Region III 2006 citation; Charles Lunsford Professor of Civil Engineering and 2007 MacArthur

Fellow Dr. Marc Edwards' ongoing research). One of the latest examples of this trend is the finding that in 2006 and 2007 DC WASA failed to collect EPA compliance samples between late May and early July, the period when lead in the District's drinking water has been documented to reach its peak. Attachment 1 is a graph from Dr. Edwards demonstrating the fluctuations of lead-in-water concentrations throughout the year in experiments at the Washington Aqueduct. It shows that lead in the District's drinking water peaks in late spring/early summer. DC WASA's official reports to the EPA, which were obtained through FOIA requests, reveal that in 2006 and 2007 the agency's Lead and Copper Rule compliance data did not include lead-in-water measurements from this time period. The two shaded rectangles on the graph indicate the periods for which DC WASA lacks compliance data. Had DC WASA included data from late spring/early summer, it may have failed to comply with the Lead and Copper Rule.

- The Centers for Disease Control states that "for homes with children or pregnant women and with water lead levels exceeding EPA's action level of 15 parts per billion," only bottled water should be used (http://www.cdc.gov/nceh/lead/faq/leadinwater.htm). DC WASA's January-June 2007 Lead and Copper Rule compliance measurements show several 1st draw samples in the hundreds of parts per billion (data available upon request). These measurements represent lead-in-water levels citywide. The small number of homes with excessively high levels of lead in DC WASA's targeted sampling translates into potentially thousands of District residences with elevated levels of lead at the tap. DC WASA has not clearly informed District residents that many 1st draws of water (in the morning or after any 6-hour stagnation period) may be contaminated. Instead they insist on making the case that their purported compliance with EPA regulations proves the District's tap water is totally safe for drinking and cooking.

- EPA law regulates only 1st draw water samples. 2nd draw or flush samples, which are more representative of the water residents use to drink and cook, do not count. If 2nd draw samples counted, DC WASA's latest Lead and Copper Rule compliance monitoring data would have rendered the agency out of compliance with EPA regulations. Specifically, DC WASA's July-December 2007 compliance data show that 13 of the 101 2nd draw measurements exceed the EPA action limit of 15 parts per billion (data available upon request). These data strongly suggest that lead in the water of thousands of district homes will frequently be elevated above the action level following a 30 second flush. DC WASA has not clearly informed District residents about the possibility that their 2nd draw water could be contaminated. Rather they insist on making the case that their purported compliance with EPA regulations proves the District's tap water is totally safe for drinking and cooking.

- The only extensive water testing in the District of Columbia occurred at DC public schools in 2006-2007 and revealed serious problems with lead at the tap. 77% of schools had at least one tap with lead levels that exceeded the EPA action limit of 15 parts per billion. 10% of schools had at least one tap with lead levels above 700 parts per billion, exceeding EPA's action limit by at least 46 times. When a piece of jewelry is found to leach an equivalent amount of lead (i.e., over 175 ug Pb), the Consumer Product Safety Commission considers fining the manufacturer and issuing a recall because of concern

over *acute* health effects in children who might ingest the jewelry. Two taps at DC public schools dispensed water with such high concentrations of lead (i.e., over 5000 parts per billion) that it qualified as "hazardous waste." These alarming measurements were obtained despite the use of a testing protocol recommended by DC WASA that is known to hide lead problems. **Specifically, in 2007 DC WASA instructed DC public school officials to flush every school for 45 minutes the night before sampling.** Flushing is a remedial procedure for lowering lead levels at the tap when there is a known lead problem. In 2004, DC WASA flushed schools for 10 minutes the night before sampling and was criticized by the scientific community for hiding lead at the tap problems (Renner 2006d). In 2007, the agency extended the flushing time to 45 minutes and is now refusing to discuss the latest test results. At a community meeting on January 30, 2008, DC WASA's General Manager said that questions about lead in school water must be directed to the schools. He also denied any link between the contamination of school water and possible lead-in-water problems citywide. So far DC WASA has not responded to data we brought to their attention showing that in 2004 lead levels in apartment buildings, day care centers, and other non-residential facilities around the city were actually *worse* than lead levels at DC public schools. All these sets of data were produced by DC WASA through FOIA requests.

II. After 3+ years of telling District residents that partial lead pipe replacement is an effective solution to high lead levels at the tap, DC WASA now wants to slow down its lead pipe replacement program, which consists of both full and partial replacements. To justify its proposal, and by extension its reneging on its 2004 community pledge to remove all its lead pipes by 2010, DC WASA said that a) residents do not choose full pipe replacements (which are known to be effective at reducing lead-in-water levels) and b) partial pipe replacements "have shown only small decreases in lead levels at the tap" and are thus not cost-effective (DC WASA 2008). Only after intense questioning from District residents on January 30, 2008, did DC WASA admit that its partial lead pipe replacements often result in lead spikes to the water for "several weeks" after construction. DC WASA still has not informed the public that its partial pipe replacements pose both a short- and a long-term health risk to District residents.

- The public would not have learned that partial lead pipe replacements often result in lead spikes to the water for *at least* several weeks after construction had it not been for the agency's official 2006 post-partial pipe replacement data obtained through a FOIA request. On November 9, 2007, Dr. Edwards presented this data via e-mail to DC WASA and received no response (e-mail communication available upon request). We presented the same data to DC WASA during a community meeting on January 30, 2008 and were denied an explanation. It was only after persistent questioning at that same meeting that one DC WASA employee finally admitted the spikes can last for weeks after partial replacement. On February 21, 2008, at a session with DC Councilmember Jim Graham, Dr. Edwards presented DC WASA with the data a third time and again DC WASA stated that they were unprepared to discuss the results. DC WASA added that they had recently discovered a gross lab error in the dates of many of the post-partial pipe replacement measurements from 2006. The correct dates, they claimed, showed that the majority of lead spikes occurred only days, and not weeks, following construction. Even with the

corrected dates, however, post partial pipe replacement levels exceed Lead and Copper Rule standards for months after replacement (see attachment 2). To date, a month and a half after adjusting the original dates, DC WASA has failed to provide confirmation from its lab of the alleged errors, despite repeated requests from the public. Moreover, the agency has admitted having no data that shows if and when lead spikes after partial lead pipe replacement drop below the EPA action limit.

- In 2004 DC WASA was warned against the use of partial pipe replacements because of the lead spikes such replacements can cause (see Nakamura & Timberg 2004). The spikes can result from disruption of existing lead scale (i.e, lead rust) and also from the physical contact between the new copper pipe and the old lead pipe, which makes a battery of about 0.5 Volt. This copper:lead battery accelerates lead corrosion and can extend lead spiking for weeks, months, and even years after replacement. Sometimes the battery starts off weak, but when the water chemistry changes it can be activated suddenly and can cause lead to leach at astronomical levels. This is precisely what happened in 2004 in Greenville, NC where lead skyrocketed in a short amount of time after a supposedly innocuous switch in the water from one chemical to another (Renner 2006b). Installation of an inexpensive device called a "dielectric" can eliminate this problem. For four years, DC WASA consistently asserted to the EPA and water corrosion experts around the country that its partial pipe replacements included dielectrics and, therefore, that DC residents were completely protected from the battery effect. On February 21, 2008, however, during our session with Councilmember Graham, **a DC WASA engineer finally admitted that WASA had never ever used dielectrics.** DC WASA confirmed the truth of this statement on March 10, 2008 at a City Council oversight hearing. Today, over 9,000 DC residences have a partial lead pipe replacement with no dielectric. This can cause a potential long-term problem, and DC WASA should be held accountable for its years of misleading statements.

- Through its suboptimal partial pipe replacements, DC WASA has potentially placed the health of thousands of District residents at risk. Despite the agency's claims to the contrary, DC WASA's public education materials on lead pipe replacements lack clear information on a) the benefits of full pipe replacement and b) the possibility of lengthy and dangerous lead spikes following partial replacement. Rather, they recommend precautionary measures for one to two, at the most, weeks after partial replacement, thus giving DC residents the impression that partial pipe replacements are a viable answer to lead at the tap and leaving them unprepared for serious adverse consequences.

- Further demonstrating DC WASA's lack of commitment to public health, on March 10, 2008, DC WASA's General Manager testified to the DC City Council that starting in January 2007, DC WASA no longer tested customers' water after partial pipe replacement, despite the fact that prior testing had revealed that lead in hundreds of homes tested high after construction. The General Manager also admitted that the agency has not offered to retest any homes where they conducted partial service line replacement, not even homes where initial post replacement tests showed high levels of lead.

III. DC WASA cites a 2004 report by the CDC as indication that high levels of lead in the District's drinking water do not pose a serious health risk to children (Stokes, et al. 2004).

- Many of the authors of the CDC report were employees of the DC Department of Health (DOH), an agency that played an active role in covering up the lead-in-water crisis during 2001-2004. Several employees of DOH were fired for their role in the lead crisis, and more would have had the same fate if evidence of harm to the District's children had been acknowledged. Moreover, the 2004 CDC report was criticized severely as "quick," "sloppy" and misleading by internationally renowned pediatrician and expert in children's environmental health Dr. Bruce Lanphear and by Dr. Marc Edwards (Renner 2006c).

- In direct contradiction to DC WASA's sworn testimony under oath to Congress in 2004, FOIA requests revealed that in 2004 DOH found drinking water as the only identified source of lead for several children with lead poisoning. Other children with high blood lead levels had no identified lead paint hazards, but water was never tested at their home. While DC WASA cannot refute these facts – as reported on *WAMU* (Nurnberger 2006), *Salon* (Renner 2006c) and *Environmental Science & Technology* (Renner 2006a) – they persist in repeating the falsehood that all children with elevated blood lead had identified lead sources other than water.

- Even in 2007 and 2008, when a) the District's drinking water is supposed to be safe, b) less than half of children 2 years of age and under are screened for lead, c) a significant percentage of environmental risk assessments at the homes of children with elevated blood lead levels do not sample drinking water, and d) standard analytical methods can miss over 90% of lead in water (Triantafyllidou, et al. 2007), the DC Department of the Environment reported that water was the only identified source of lead for 3 out of 61 District children with elevated blood lead levels where drinking water tests were performed as part of the lead risk assessment. Water was one, among other identified sources of lead, for 6 additional children (report available upon request). This means that despite sampling and analytical limitations, in 2007 and 2008 the District's drinking water was implicated as a source of lead for 15% of DC children with elevated blood lead levels whose drinking water was actually tested for lead. In light of the fact that exposure to lead-contaminated water is easily preventable through the use of simple remedial measures, these numbers are inexcusable.

IV. Under its current leadership, DC WASA demonstrates a callous disregard for the health and lead-related health concerns of its customers. Since 2001, this agency has shown a consistent pattern of careless and unethical management of lead at the tap. It is an agency that misleads both the public and the leadership of Washington, DC. It is an agency that through strict data secrecy defies accountability.

We ask the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia to take these matters into serious consideration. Just like in 2004, now again in 2008 the groups testifying herein request and require immediate intervention by EPA in this

urgent public health matter. We request that the EPA Administrator use the emergency powers granted under the Safe Drinking Water Act (SDWA) to exercise due diligence in overseeing a public health situation that is urgent and out of control. We ask EPA to request that DC WASA takes the necessary steps to address the concerns mentioned in the testimony above. DC water consumers, ratepayers and taxpayers are in their seventh year of a crisis that shows no sign of abatement. DC WASA and EPA need to stop managing the crisis by PR and focus on solving the real public health problem of lead exposure from drinking water taking place in thousands of District homes. Most importantly, EPA and DC WASA need to regain the public's trust by fixing the lead-at-the-tap problem in the District.

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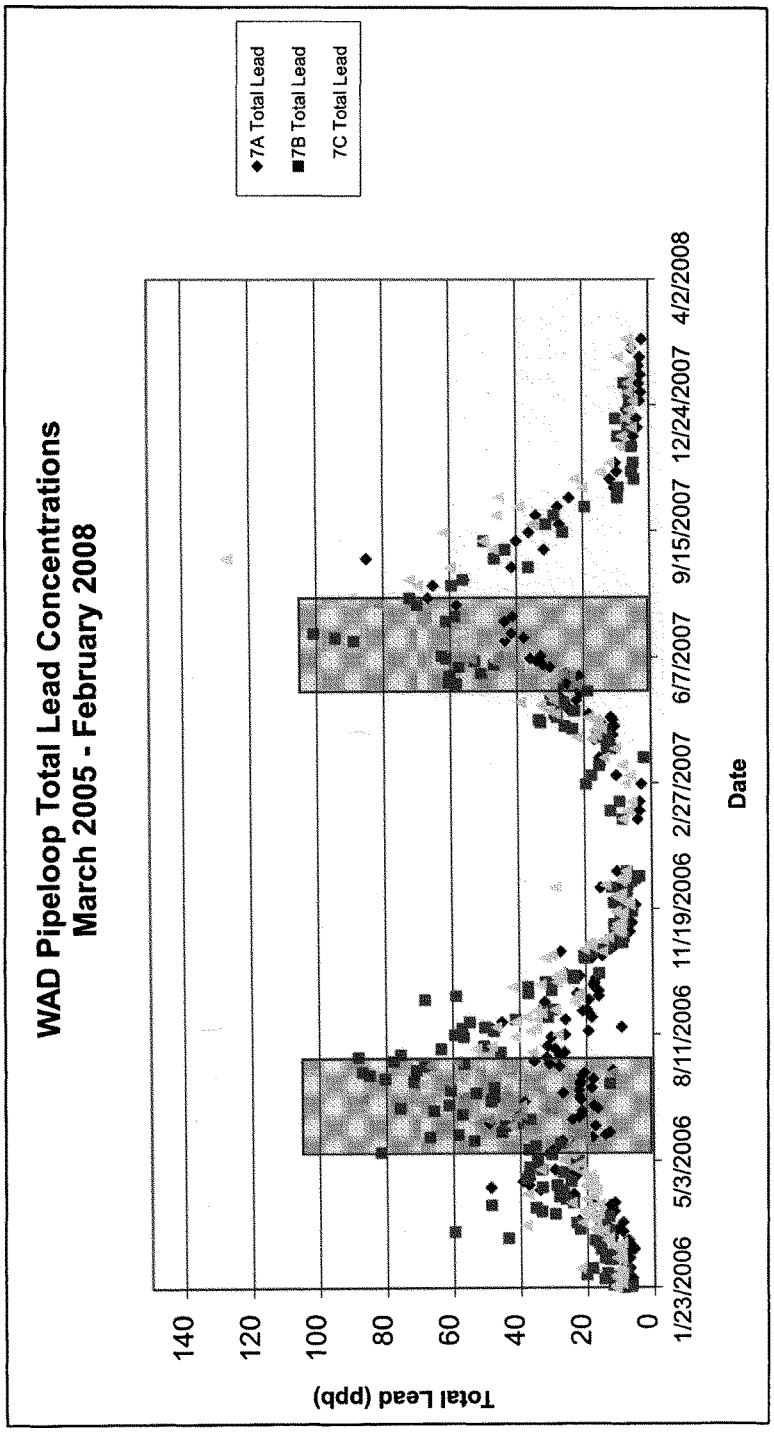
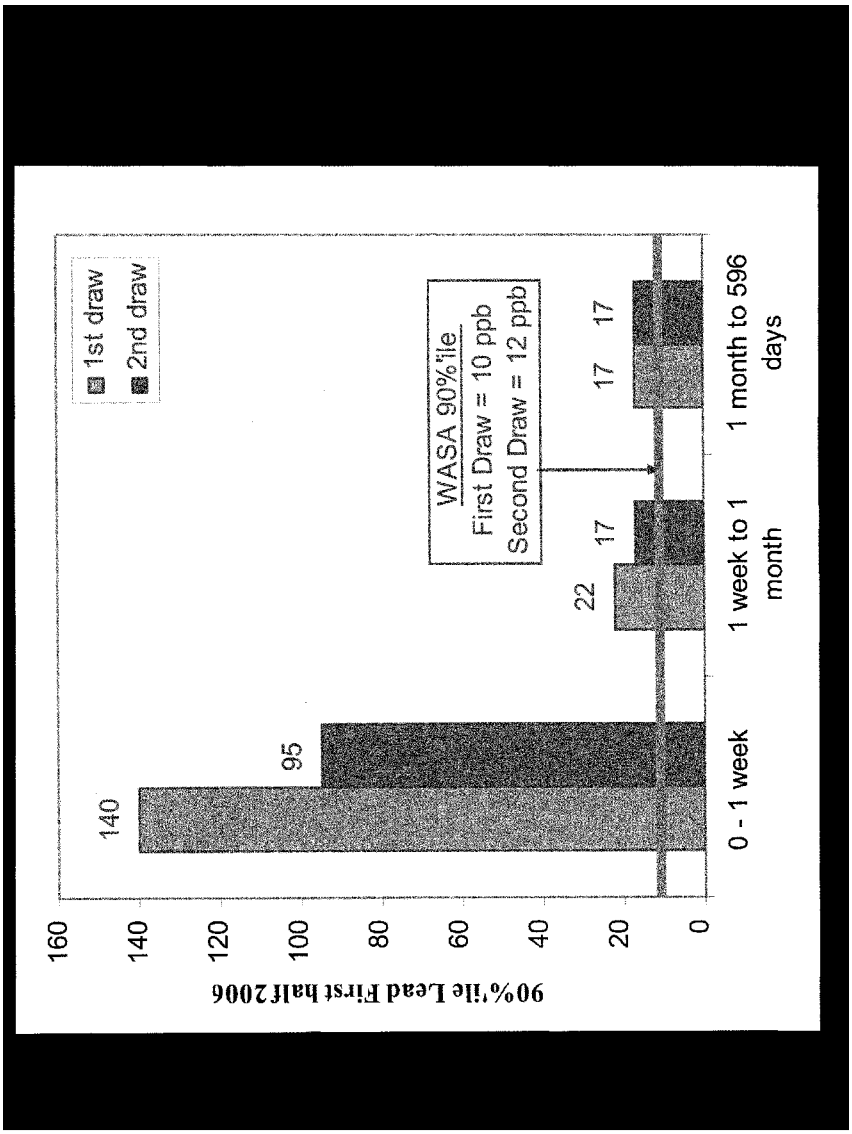

WAD Pipeloop Total Lead Concentrations
March 2005 - February 2008
7A Total Lead
7B Total Lead
7C Total Lead
Total Lead (ppb)
140
120
100
80
60
40
20
0
1/23/2006
5/3/2006
8/11/2006
11/19/2006
2/27/2007
6/7/2007
9/15/2007
12/24/2007
4/2/2008
Date


90%'ile Lead First half 2006
160
140
120
100
80
60
40
20
0
1st draw
2nd draw
140
95
22
17
17
17
WASA 90%'ile
First Draw = 10 ppb
Second Draw = 12 ppb
0 - 1 week
1 week to 1 month
1 month to 596 days

Mr. DAVIS OF ILLINOIS. With evidence of trace amounts of pharmaceuticals in the area's water supply and concerns over the health of local aquatic life, I anticipate that both the quality of the metropolitan area's drinking water and the condition of our area's waterways will be major topics of discussion this afternoon.

Further, as part of a 10-year Capital Improvement Program [CIP], WASA has adopted an aggressive and somewhat ambitious time schedule for making these enhancements to the agency's aging infrastructure, equipment, and systems. Two of the most noteworthy Capital Improvement Projects currently underway include the combined sewer overflow project, a part of WASA's long-time control plan, and the Blue Plains total nitrogen program.

It is my understanding that WASA and the Environmental Protection Agency [EPA] have been conducting ongoing discussions on how best to meet the Blue Plains' recently modified national pollutant discharge elimination system permit. The subcommittee looks forward to hearing about the outcome of recent negotiations on WASA's proposed plans for its Blue Plains total nitrogen program.

Today's hearing will examine H.R. 5778, "The District of Columbia's Water and Sewer Authority Independence Preservation Act," which would amend the D.C. Home Rule Charter Act to provide the legal authority for WASA to function as a fully independent authority by officially shifting oversight of the agency's financial operations and personnel matters to WASA's Board of Directors instead of the District of Columbia's chief financial officer.

I thank you and I look forward to hearing the testimony of today's witnesses.

I also ask unanimous consent that the statements of Ranking Member Marchant and full committee Member Tom Davis be entered into the record.

Without objection, so ordered.

[The prepared statement of Hon. Danny K. Davis follows:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS AT THE SUBCOMMITTEE ON FEDERAL WORKFORCE AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING ON

District of Columbia Water and Sewer Authority (D.C. WASA) Oversight Hearing

April 15, 2008

Good afternoon Ranking Member Marchant and Subcommittee Members, and all of you present in the audience today.

Ladies and gentleman, welcome to the Subcommittee's first D.C. Water and Sewer Authority (WASA) oversight hearing of the 110th Congress. It has been nearly three years since a hearing has been held on WASA and issues

pertaining to the quality of the city's drinking water and environmental conditions.

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Since it creation as a quasi-independent regional utility agency in 1996, WASA has made significant progress in carrying out its statutory mandate of providing retail drinking water distribution, wastewater collection, and wastewater treatment services to 570,000 District residential and commercial customers and providing wholesale wastewater treatment services to over 1.6 million customers in Montgomery and Prince George's counties, through the Washington Suburban Sanitary Commission and Fairfax and Loudoun counties and the city of Vienna, Virginia. Over the past decade, WASA has invested over $1 billion in various infrastructure improvements, taken steps

to guarantee the region's safe drinking water, attained a AA-bond rating, and ensured that the Blue Plains Wastewater treatment plant operated in compliance with all permit requirements. In other words, we have come a long way from the boil water alerts of the mid-1990s.

Nevertheless, despite the apparent progress WASA and it regional partners have made over the years, a number of issues, challenges and concerns remain to be addressed. First and foremost, the Subcommittee looks forward to receiving an update on WASA's Lead Service Line Replacement Program and possible alternative approaches for reducing the leakage of lead into the drinking water supply. The Coalition

of Parents for Nontoxic Alternatives, the Alliance for Healthy Homes, and Clean Water Action have pointed to ongoing shortcomings in WASA's management of the District's lead-in-water problem and I ask unanimous that their statement be entered into the record. With evidence of trace amounts of pharmaceuticals in the area's water supply and concerns over the health of local aquatic wildlife, I anticipate that both the quality of the metropolitan area's drinking water and the condition of our areas waterways will be major topics of discussion this afternoon.

Further, as part of a 10 year capital improvement program, WASA has adopted an aggressive and somewhat ambitious time schedule

for making needed enhancements to the agency's aging infrastructure, equipment and systems. Two of the most noteworthy capital improvement projects currently underway, include the Combined Sewer Overflow project, a part of WASA's long-term control plan and the Blue Plains Total Nitrogen Program. It is my understanding that WASA and the Environmental Protection Agency (EPA) have been conducting ongoing discussions on how best to meet the Blue Plains recently modified National Pollutant Discharge Elimination System (NPDES) permit. The Subcommittee looks forward to hearing about the outcome of recent negotiations on WASA's proposed plans for its Blue Plains Total Nitrogen Program.

Today's hearing will examine H.R. 5778, "The District of Columbia Water and Sewer Authority Independence Preservation Act," which would amend the "D.C. Home Rule Charter Act" to provide the legal authority for WASA to function as a fully independent authority by officially, shifting oversight of the agency's financial operations and personnel matters to WASA's Board of Directors, instead of the D.C. CFO.

Thank you and I look forward to hearing the testimony of today's witnesses.

Mr. DAVIS OF ILLINOIS. I now yield to Ms. Norton for an opening statement.

Ms. NORTON. Thank you very much, Mr. Chairman. I particularly thank you for this hearing. When Representative Tom Davis was Chair of this committee we took to holding hearings on an annual basis, particularly after WASA had significant lead in the water problems.

This is a hearing I can endorse. We do not have hearings here on District of Columbia matters because we are not the Council of the District of Columbia, but this is a hybrid agency if ever there was one. It is located in the District of Columbia. It has been a District of Columbia agency since it was established. Yet, serves the region, and the region pays for its services so it is appropriate that we have these hearings.

Now, because it is classified as a D.C. agency, and should be, of course, the matter goes to the Council and the Mayor, as well, but it has always been treated as what it is: an agency that, yes, chiefly serves the District of Columbia, but it also serves neighboring counties, who also pay for the service, particularly the fewer services.

Before I get to the real subject matter of this hearing, I would like to get to what the hearing is not about. The hearing is not about what you discussed, Mr. Chairman, because the matter that you clarified as to changes that I have agreed upon has been done. I think it is very important, when we get the cooperation of all of us concerned—that is certainly the way I deal with most Members of Congress, especially of the region—that we make sure we always handle matters in that way.

I do want to say that there was an attempt to put something on the D.C. appropriation. You are looking for a fight if you do that. If you have a problem with the District of Columbia, they could be wrong. I would be willing to negotiate with you, because if they are wrong I am going to tell them they are wrong. But the one thing I will fight you on is to change law by fiat by doing what, frankly, is not allowed, Mr. Chairman, and that is trying to change the law on an appropriation bill.

I found a very effective partner, and I am not surprised, given the way in which he and I have always operated, that he and I could sit down and come to an agreement on this matter, and so I want to acknowledge and thank my good colleague, Chris Van Hollen, for the way he has worked with me constantly so we could solve this matter and it will not become a matter of contention. I think it ought to be handled in this hearing so that it does not become a matter of contention.

It became clear to me in letters I wrote to the Mayor and to the Council, who have cooperated fully with me, that members of the Council, seeing that WASA, in particular, was a D.C. agency, began to treat it, or at least one or two members did, and then proceeded to treat it as if it were just another D.C. agency. Well, they were ignorant of some of the changes that Chairman Davis and I painstakingly negotiated when WASA got into deep trouble.

So it seemed to me that the way to handle this was to, in fact, inform the Council of what had happened. Mr. Chairman, I wrote two letters and sent copies of this letter to the appropriate people

in the region, the Representatives and others, Senate and House, one on March 14th and another on April 10th. The one on March 14th I actually released. I am releasing and asking that the two letters be put into the record. Another letter on April 10th, when it was clear that this matter had not been settled.

To just read one sentence from the letter, I say, "Therefore, I ask the Council to move expeditiously in the Budget Support Act, using the emergency process to remove the provisions that affected the WASA personnel structure."

Mr. Chairman, this simply involves the fact that the District had no commuter tax, has many of its agencies with members from the region, and in its frustration sometimes tries to at least see to it that D.C. residents get jobs. That is not appropriate for an agency which is regional in its span.

I want to thank Mayor Fenty and Chairman Vincent Gray for cooperating with me. In the Budget Support Act is an amendment to section 213 of the D.C. Code that removes any priority for any member of the region, including the District of Columbia, for jobs.

Essentially, what has been agreed upon by the Member from Maryland, Mr. Van Hollen, and me is that these are matters for the Board. This is the status quo ante. If, in fact, you have a board that has members from three regions, you have something that is unusual in this country. It is sort of like the Metro Board, but it is sort of different, because Metro is not a D.C. agency. We have done a hybrid here and we have to make sure that we re-educate officials every so often, for example: new members of the Council as to how this works, because there is nothing quite like it.

Therefore, we make it clear that it is the Board, not any jurisdiction, that is to decide matters affecting finances, procurement, and personnel. You can't have a regional agreement otherwise.

I hope that this matter will not become any point of contention here because, in fact, we need to move on to what this hearing must be about. We have been doing an annual hearing on WASA, and the reason we had to do it on an annual basis is we discovered lead in the water led to a huge controversy. Several hearings were held here a few years ago when that happened. It led to really path-breaking hearings on lead in the water that alerted many other jurisdictions. The chairman, then Ranking Member Mr. Waxman, and I introduced a complete revision of the Clean Water Act that he had been responsible for, even before I came to Congress.

This water still is controversial in the District of Columbia, and it is one of the most important things that we have to discuss in this hearing.

We are going to be discussing both water and sewer services. We are going to be discussing what I think are really important questions raised by the decision of WASA, under pressure, to do partial replacement of lead pipes. When you replace a lead pipe on the public part, the part that the public controls, and yet the private citizen does not; there is still lead in the water.

Meanwhile, the Aqueduct had to respond, as well, and we will be at pains to hear whether the new chemical in the water solves the problem for all intents and purposes.

Beyond questions of safety for residents of the city and the region, I have a principal reason, as the lead sponsor of the Anacostia

Watershed Initiative, which was passed last year as part of the Water Resources Development Act, and my own interest in broader efforts to green the District of Columbia and the national capital region. Indeed, tomorrow I am going to be holding a hearing in the subcommittee that I chair, first of a series on greening Washington and the national capital region, because the Federal Government has the largest footprint in this region, and therefore should be the leader in greening and energy conservation in a number of ways. We should be the leader for the rest of the country.

Mr. Chairman, the Anacostia River matter is particularly important to members of the region. Actually, most of the Anacostia River is in Maryland. Most of the stuff that gets into the District of Columbia starts upstream. But they are our friends and we work together. Everybody in the region works on this bill, from Mr. Hoyer on down, if I may put it that way.

But there is a special advantage to the fact that the District of Columbia has a part of the Anacostia. It has enabled me to go to the President of the United States, both Democratic and Republican Presidents, to get money put in the D.C. budget for the Anacostia River. That could not have happened, Maryland and Virginia but because our budget has to go to the President anyway, he normally adds a few dollars here and there. Most of the money I have been able to get came that way or from my membership on the Water Resources Subcommittee, where we have just gotten $35 million for upgrades and $20 million to clean the Anacostia.

This year the President responded by putting $14.5 million in the D.C. budget for combined sewer overflow, the major reason why the Anacostia is polluted, and he should have and the Water Resources Committee and Congress should have, because of Federal involvement in the pollution of the Anacostia. It is the Federal Government that is on the banks of the Anacostia. It is the Corps of Engineers who built the sewer system that is the problem in the first place.

We just erected a new Department of Transportation that overlooks the stinking Anacostia River. We have just bought to the Navy Yard from Virginia, the Naval Sea Systems Command, to a renovated Navy Yard right there on the Anacostia. The original and most serious District side contamination came from the old Navy Yard. The Federal Government owes the region, and particularly this city, for the contamination that is there now.

Yet, we have been unable to get long-term money for what is essentially a Federal problem. I am going to be seeking the help of other Members of the region.

I note that in my own Water Resources Subcommittee there are members of the subcommittee who have been able to get authorizations for hundreds of millions of dollars at a time for combined sewer overflow, because this is a national problem. The difference between them and us is that the Federal Government had nothing to do with their combined sewer problem. They don't have a Federal river like the Anacostia, built by the Corps of Engineers. Yet, because of the way in which money gets distributed in this place, these people get hundreds of millions of dollars in order to deal with the problem, but we have not been as fortunate and the Anacostia is one of the most polluted rivers in the United States.

So, Mr. Chairman, this is a hearing that we may be asking you to have on a regular basis, simply because, although the Council does have oversight, obviously Maryland and Virginia are not subject to their oversight. In fact, this matter was resolved continuing WASA as a D.C. agency only because then Chairman Tom Davis and I worked to get an amicable compromise. I believe that the agreement we have achieved between my good friend, Mr. Van Hollen, and me takes us back to the status quo ante, which is working quite well, thank you.

Thank you very much, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you. Without objection, your request will be included in the record.

Mr. Sarbanes.

Mr. SARBANES. Very briefly, Mr. Chairman, thanks for this hearing. I look forward to the testimony. I think Congresswoman Norton brings an extremely responsible perspective to the issue of the jurisdictional structure of WASA. Of course, she brings that regional perspective through the particular lens of the District of Columbia. I come to this discussion and the issue of the regional perspective through the particular lens of Maryland. I look forward to hearing from Congressman Van Hollen and hearing more about the balance that has been struck here.

I would note that when we talk about the regional reach or effect or impact of WASA, it is not just the immediate region, because obviously there are impacts on the Chesapeake Bay and the wider region and I have that perspective, as well.

Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Sarbanes.

Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I want to thank you and the ranking member for holding this hearing on the D.C. Water and Sewer Authority and thank you for allowing me to join with you today.

I do want to thank Congresswoman Norton for being such a constructive partner in this effort as we seek to resolve some of the issues that have already been discussed today.

WASA, of course, has a regional impact, as you and others have noted. It affects a lot of my constituents, both as receivers of the services and also as employees and ratepayer. As Mr. Sarbanes has noted, it also has an impact regionally on the waterways, both the Potomac River, the Anacostia River, and also the Chesapeake Bay.

I am pleased that we have been able to work together on a regional basis with respect to trying to get more Federal funds to clean up the Anacostia and the Potomac and the Chesapeake Bay. In fact, the Chesapeake Bay Watershed Task Force, which is made up of Members from the entire region, is fully supporting the request for the cleanup of the Anacostia, and we want to make sure that we get those funds.

WASA has come a long way from the days of earlier environmental and financial mismanagement that plagued its predecessor agency. As I think has been noted by the chairman, the Blue Plains Wastewater Treatment Plant was continually cited by the EPA and the Justice Department for contamination of local waterways back before the regional authority was created. In addition, the Justice

Department cited the former agency for diversion of $96 million in fiscal year 1995 from the operations and maintenance of this regional wastewater treatment center into the general fund of the District of Columbia.

It was those problems and the misuse of regional user fees that led to WASA's creation in the first place, and it was largely due to the foresight of members of this committee—Congresswoman Norton, Congressman Tom Davis—who crafted that earlier solution to this problem. They created WASA as a utility within the District of Columbia but with independent financial personnel and procurement operations authority to be governed by an independent board of directors.

This board is comprised of members from each of the participating jurisdictions, from the District of Columbia, Maryland, and Virginia. In fact, the principal board members from each participating jurisdiction are the chief administrative officers from their respective localities, and we are going to be hearing from some of them later in today's hearing.

The House Report 104–635 from this committee in 1996 reflects the hard work of this committee and that of Ms. Norton and Mr. Tom Davis to establish WASA as an independent entity, and I request that it be included in the record today.

[The information referred to follows:]

104TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 104–635

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY ACT OF 1996

JUNE 25, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

REPORT

[To accompany H.R. 3663]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 3663) to amend the District of Columbia Self-Government and Governmental Reorganization Act to permit the Council of the District of Columbia to authorize the issuance of revenue bonds with respect to water and sewer facilities, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND AND NEED FOR THE LEGISLATION

A. BACKGROUND

History of Blue Plains Wastewater Treatment Facility

Though not one of Washington, D.C.'s tourist attractions, the Blue Plains Wastewater Treatment Plant is the largest of its kind in the United States and is the Washington Region's most significant environmental facility. The facility is responsible for treating raw sewage from Washington, DC and neighboring jurisdictions in Maryland and Virginia. Blue Plains provides sewer service for almost all major federal facilities in the Washington region.

Owned, operated by, and located in the District of Columbia, about 52% of the influent sewage flow is from the District; about 39% from the Washington Suburban Sanitary Commission (Montgomery County and Prince Georges County in suburban Maryland) and approximately 9% from Virginia (the Counties of Fairfax and Loudon, plus Dulles Airport, as well as the Pentagon). Thus, most

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all federal facilities in the Washington Region, in all 3 branches of government, plus around 2 million residential users, depend upon Blue Plains. A collapse of Blue Plains would be an ecological catastrophe.

The Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (the "Clean Water Act") 33 U.S.C. 1319, governs protection of the water quality, fish, wildlife, scenic and recreational aspects of the Potomac River and its tributary navigable waters. While the District owns and operates Blue Plains, it is subject to the conditions and limitations contained in the National Pollutant Discharges Elimination System ("NPDES") Permit Number DC0021199 (the "Permit") issued by the Environmental Protection Agency (EPA) effective February 4, 1991, pursuant to the Clean Water Act. In September, 1995, the EPA listed the flow of raw sewage into the Potomac because of shortcomings at Blue Plains as a "very real possibility." The Permit expired on February 3, 1996. Negotiations are currently underway to extend or renew the permit.

How the Blue Plains Wastewater Treatment Facility and the water and sewer collection and distribution systems of the District of Columbia deteriorated is a story that reflects the enormous growth of the Washington region beginning with World War II and then the growing out migration to the suburbs. It is also an all too familiar story in the Nation's Capital of municipal shortcomings in terms of available resources, best management skills, and allegations of serious improprieties.

Blue Plains now treats an average 325 million gallons a day (mgd) of sewage. Consisting of 154 acres of waterfront land in Southwest, the District calculates that Blue Plains is an asset valued at $1.4 billion. It's annual operating and capital budget is around $250 million.

In 1934 the original facilities provided primary treatment only, treating 130 mgd's with a service population of around 650,000. Capital funding for construction was provided by the Federal government, the District, Fairfax County, Virginia, and the Washington Suburban Sanitary Commission (WSSC). The WSSC is an entity of the state of Maryland which represents Montgomery and Prince Georges County.

Expansion occurred in 1949, when chlorination was added, along with secondary (biological) treatment. The plant was expanded again in 1959. The most recent expansion and upgrade started in 1972 and was completed in stages by 1983. The plant now has a peak design capacity of 650 mgd, plus primary treatment capacity for an additional 289 mgd of storm flow.

EPA funding began in 1973. Since then, EPA has given the District over $360 million in construction grants. Maryland and Virginia have received an additional $187 million to support Blue Plains construction.

In 1984, a Blue Plains Feasibility Study evaluated various assessed needs through 2010. An upgrade to 370 mgd with a peak flow of 740 mgd was recommended, and expansion is currently underway.

The Blue Plains collection system consists of approximately 1,275 miles of sewers, 9 wastewater pump stations, and 15 storm water

pump stations. Because Blue Plains is in the District, EPA Region III has primary oversight for its operation. The District's Department of Public Works' Water and Sewer Utility Administration (WASUA) is responsible for the day-to-day operation of the water and sewer systems and operation of the Blue Plains facility. The District's potable water supply is provided by the Washington Aqueduct which is owned and operated by the US Army Corps of Engineers. The District of Columbia owns and maintains its water distribution system.

The existing institutional arrangements for treatment and transmission capacity allocation and for capital and operating cost allocation are governed by a series of agreements between the users. Prior agreements are: the 1954 Agreement between WSSC and the District, the 1959 Agreement between Fairfax County and the District; the Agreements executed in the 1960's between the District and the Users of the Potomac Interceptor; the 1970 Memorandum of Understanding; the 1971 Interim Treatment Agreement; the 1974 Blue Plains Sewage Treatment Plant Agreement as amended; the 1976 Agreement between the District and WSSC; the 1984 Memorandum of Understanding on Blue Plains; and the 1984 Sludge Memorandum of Understanding. The current operative agreement, the Blue Plains Intermunicipal Agreement of 1985 (IMA), was signed on September 5, 1985 by those acting in an official capacity for the District of Columbia, Fairfax County, Montgomery County, Prince Georges County, and the WSSC. This latter agreement was developed with assistance from the Metropolitan Washington Council of Governments.

The basic rate structure consists of two tiers. Blue Plains retail customers, that is residents of the District, have their rates set by the City Council. The suburban users are wholesale customers and their payments are calculated on a cost formula basis.

Problems and status of Blue Plains

Problems, with the Blue Plains Facility have been growing more serious since the 1970's. These underlying problems have involved permit issues and the proper handling of sludge. The EPA filed suit in 1984 against the District for numerous alleged operational problems. As a result of the suit, a formal 5 year Consent Decree was entered into in 1985. Throughout the life of the Consent Decree violations continued, and a considerable amount of stipulated penalties was owed.

In 1990 EPA filed a second lawsuit for effluent violations, construction delays and inadequate maintenance of treatment equipment. In 1991 agreement was reached on a $1.5 million penalty to settle both this and the previous case. The decree was to be negotiated, and it was not until late 1994 that an agreement was reached settling the litigation. The City paid a $500,000 penalty and made other operational changes.

On August 31, 1995, EPA issued an Administrative Order to the District to correct maintenance and operational problems. Both short-term and long-term strategies were required to be implemented. In November, 1995, EPA conducted another joint inspection. The report, completed in March, 1996, reiterated previous concerns, including financing. The report found that the capital im-

provement budget for Blue Plains would be $20 million short for FY '96. As accurately summarized and reported by R.H. Melton in The Washington Post on December 14, 1995, the EPA report warned that "Blue Plains is on the verge of failing its central mission * * * (and) is now so dilapidated it poses a serious pollution threat and will soon run out of money it needs for long-delayed repairs."

EPA and the Department of Justice also worked with the City to resolve more short-term immediate problems at Blue Plains. As stated, while the District owns and operates the Blue Plains Wastewater Treatment Works, including the Blue Plains Wastewater Treatment Facility, it does so subject to the conditions and limitations contained in the Permit issued by EPA pursuant to the Clean Water Act. EPA's National Enforcement Investigation Center (NEIC), in reports dated July, 1995, and January, 1996, presented findings alleging serious permit violations from two inspections at Blue Plains. Included were serious allegations of periodic shortages of chemicals critical for the proper operation of the facility and effective wastewater treatment, and failure to make timely payments to Blue Plains contractors and chemical suppliers. At that time the total amount awarded to the District under all EPA grants for Blue Plains exceeded $360 Million.

Citing the IMA, and the findings of a District audit dated August 11, 1995, EPA and the Department of Justice alleged that the revenues in the Water and Sewer Enterprise Fund were pooled with other revenues in the District's General Fund, and WASUA's ending cash balance for FY '94 of some $83 million was made unavailable by the District for the operation and maintenance of Blue Plains in FY 95. Overall, the District is alleged to have diverted at least $96 million in revenue from user fees. The District government took money from the Water and Sewer Enterprise Fund intended for Blue Plains and used it for other purposes. Thus, while Blue Plains was in danger of falling apart and creating an environmental catastrophe, the District government was diverting money collected for repairs and maintenance, leaving no funds for that vital work.

On February 7, 1996, the Commonwealth of Virginia served the required 60 day notice on EPA and the District of its intent to file a citizen suit under the Clean Water Act against the District for allegedly violating its EPA operating permit at Blue Plains. Virginia's main contention was that the lack of proper operation and maintenance, adequate funding, and discharge levels were caused by the District diverting rate payer funds to other uses than funding Blue Plains, and that the District should restore the funds. Virginia Attorney General James S. Gilmore, in his notice letter to District Mayor Marion Barry, said that the Blue Plains facility is in "critical condition" that could lead to "major failures" in pollution control that would endanger the Potomac River and the Chesapeake Bay.

On April 5, 1996, the last day of the sixty-day notice period, the United States Government (EPA and Justice) filed a civil action under Section 309(b) of the Clean Water Act, seeking injunctive relief against the District for alleged violations of the Blue Plains Permit. Under law, the EPA suit effectively prevented Virginia

from filing its litigation. Also filed with the Complaint was an executed "Settlement Agreement and Order" ("Consent Decree") between the parties resolving outstanding disputes. The lawsuit, referring to EPA inspections made in 1995, asserted deterioration, inadequate maintenance programs and other major problems at Blue Plains that could lead to the discharge of high concentrations of chemical pollutants and harmful micro-organisms into the Potomac. A "significant risk to public health and the environment" was warned if corrective steps weren't taken promptly. The District agreed to make significant upgrades and repairs estimated to cost $20 million over the next two years. The settlement looked to Congressional action to separate water and sewer revenues from the District's General Fund (Section 154 of the District of Columbia Appropriations for FY 1996, signed on April 26, 1996). The Stipulated Agreement and Order requires the District to submit monthly reports to EPA on the status of the construction projects outlined in the agreement, as well as the status of payments owing and made to chemical suppliers and for maintenance.

On May 9, 1996 Virginia filed a Motion to Intervene in the federal case along with a proposed Complaint. Virginia claims that the suit otherwise would not sufficiently protect its interests. As this report is filed no resolution of Virginia's request to intervene has occurred and the Stipulated Agreement and Order has not become final.

The "Congressional ratification" mentioned in the Consent Decree refers to legislation enacted by the District of Columbia government (DC Act 11–201), approved by the Financial Responsibility and Management Assistance Authority (the "control board" created by Public Law 104–8) with certain recommended amendments, and transmitted to Congress under the Home Rule Act and Article 1, Section 8, Clause 17 of the U.S. Constitution. Essentially, the District's legislation was in response to the demands made by the EPA for fundamental change in the structure and operation of Blue Plains.

The District Government's response to continuing problems at Blue Plains

On February 7, 1995 Bill 11–102 was introduced in the District of Columbia Council, known as the "District of Columbia Water and Sewer Authority Act of 1995." The bill went to hearing before the Committee on Public Works and Environment on May 3, 1995. The Committee Mark-up occurred on October 25, 1995. Following approval by the full Council and the Mayor's signature on February 1, 1996, the legislation, now known as Act 11–201 (Law 11–111), "the District of Columbia Water and Sewer Authority Act of 1996," was referred to the control board under Section 207 of Public Law 104–8. It was approved, with some recommendations for modifications, by the control board on February 15, 1996. The enactment was then officially transmitted to Congress by the District government on February 22, 1996.

Throughout the legislative process District officials met with and negotiated with officials of the suburban jurisdictions over an acceptable structure and operating scheme. The District was, and still is, facing a grave fiscal and financial crisis. This led to many

of the under funding problems at Blue Plains and for the District's water and sewer pipes. Under pressure from EPA and the suburban users of Blue Plains the District government decided to create a new, independent Water and Sewer Authority as a District of Columbia agency. The Water and Sewer Authority would include all of the "joint use" sewer facilities (the Blue Plains plant and a number of pipes within the system) along with the water distribution and sewer collection systems within the District itself.

The suburban jurisdictions strongly favored a true regional authority such as an Interstate Compact modeled after the Airports Authority or the Washington Metropolitan Area Transit Authority (WMATA). A regional authority would take considerable negotiation to set up and could only be created with the approval of the Virginia, Maryland, and District legislatures. Because of the fiscal distress of the District, the need to find a means of guaranteeing repair and maintenance of the water and sewer pipes, and the necessity to do something quickly, the District insisted on proceeding on its own. An offer was made to include voting representatives of the suburban jurisdictions on the Board of the new Water and Sewer Authority in order to give them more direct influence and to gain their acceptance for the creation of the Authority.

The thrust of the Water and Sewer Authority proposal was to separate water and sewer revenues from the General Fund so that further diversion of those funds would not be possible. The Water and Sewer Authority would set the rates it charged at whatever level was required to make it completely self-supporting and it would finance capital projects through revenue bonds secured by its own revenue. Under the terms of the home rule act (PL 93–198), the District government does not have the power to sell revenue bonds for water and sewer purposes, so the proposed new Authority could not be implemented without Congressional action to grant the necessary borrowing power.

The proposed legislation was modified considerably as it worked its way through the District's legislative process and negotiations intensified after the Council passed Act 11–201. The control board held an extensive hearing on the legislation and then forwarded it for the required 30 day Congressional review. The Committee engaged in discussions with the District government, the user jurisdictions, and EPA. Considerable background and support was provided by Council of Governments (COG) staff. The Committee reached an understanding with the District and user jurisdictions that it would not proceed with the vital revenue bond power for the Water and Sewer Authority until it was satisfied with the District's legislation and that the user jurisdictions supported the proposal.

The original District legislation finished its 30 day review and became District law on April 18, 1996. The Committee did not consider the legislation as complete, but was satisfied that negotiations were proceeding on a compromise and that it ultimately could legislate for the District on this issue if a satisfactory resolution was not found. On June 5, 1996 the District Council passed significant, substantive amendments to the original proposal which were the result of the negotiation process. These amendments were supported by the Committee, EPA, the control board, and the user jurisdictions. At a Committee hearing on June 12, 1996, the user ju-

risdictions testified that they were willing to accept and participate on the Water and Sewer Authority as amended by the Council on June 5, 1996. EPA testified that the amendments significantly improved the proposal.

The original enactment established a 10 member authority, with 4 members designated by the suburban user jurisdictions. It sought to facilitate the adequate delivery of water to the District and sewer system services to the District and portions of the Metropolitan Washington area, delegated Council authority (if Congress granted such authority) to issue revenue bonds to the Authority, dedicated District water and sewer revenues to the Authority, transferred the functions of the Water and Sewer Utility Administration (WASUA), Department of Public Works, to the Authority, and abolished WASUA.

Amendments recommended by the Control Board included formalizing a plan within 60 days for the repayment of the unavailable funds, approximately $81 million, and a requirement to maintain complete separation of the water and sewer revenues and cash balances from those of the General Fund.

In order to lay the foundation for timely and rapid Congressional action, the District of Columbia Subcommittee of the Government Reform and Oversight Committee, chaired by Rep. Tom Davis, held an Oversight Hearing on February 23, 1996 on "Water and Sewer Systems in the District of Columbia." Chairman Davis, in his Opening Statement, referred to Blue Plains as an "enormous and growing" crisis, and mentioned the EPA "boil water" alert in the District in November, 1995 as indicative of concurrent problems with the water distribution system.

Following further negotiations between the user jurisdictions, the District of Columbia Council, by emergency legislation, amended Act 11–201 to incorporate agreed upon amendments. Key provisions increased the new Board's size from ten to eleven members (6 members from the District and 5 from the suburban jurisdictions), raised the number of Board members to be recommended by Montgomery and Prince Georges Counties from one to two members each, and eliminated the Board of Director's position reserved for a person recommended by the WSSC. Eight votes are necessary to hire or fire the General Manager. The Water and Sewer Authority is specifically named as the permit holder for Blue Plains as requested by EPA. The financial independence from the General Fund is strengthened and the study of privatization or forming a regional authority is clarified and improved. The emergency legislation was passed by the Council on June 5, 1996.

There then remained, as contemplated by the Act, the necessity for Congress to adopt affirmative legislation conferring revenue bond power for water and sewer purposes on the Council, allowing the Council to transfer such power to the Water and Sewer Authority, and to take the Authority "off-budget" (meaning that the Mayor and Council cannot affect the self-funded budget adopted by the Board of the Authority). Accordingly, H.R. 3663, District of Columbia Water and Sewer Authority Act of 1996, was introduced on June 18, 1996. The bill was referred to the Government Reform and Oversight Committee, and a hearing was held by the District of Columbia Subcommittee on June 12, 1996.

B. NEED FOR LEGISLATION

H.R. 3663 amends the Home Rule Act to authorize the issuance of revenue bonds with respect to water and sewer facilities, and for other necessarily related purposes. Bonding and budget matters for the District are covered in the Home Rule Act (PL 93–198) and can only be changed by Act of Congress. Without H.R. 3663 the District of Columbia's Water and Sewer Authority (Act 11–201, amended by Emergency Act on June 5, 1996) is a de facto nullity.

Thus, H.R. 3663 is essential in order to allow revenue bonds for water and sewer purposes and to permit the District Government to delegate that power to the new Water and Sewer Authority. Other provisions are needed to prevent the District Government from changing the Authority's budget, and to exempt bond proceeds and repayments from being part of the District's appropriations process. Also, when Water and Sewer Authority revenues are removed from the General Fund they must also be removed from the calculation determining the District's debt service cap and, at the same time, existing water and sewer General Obligation bonds sold for water and sewer purposes must be removed from that calculation.

The District Government has the power to issue General Obligation bonds for any legitimate purpose and has used this authority since 1984 to sell bonds for water and sewer purposes. Section 490 of the Home Rule Act gives the District of Columbia Council the power to sell revenue bonds only for certain specified purposes. The Council does not currently have the power to sell revenue bonds for water and sewer purposes, and may not provide that revenues of the new Water and Sewer Authority may be used to pay off revenue bonds for those purposes. Only Congress can confer this power. When the Council is given such power HR 3663 provides that it may (as it has already done legislatively) delegate that power to another District entity—in this case the new Water and Sewer Authority.

Revenues in the District's Water and Sewer Enterprise Fund were "pooled" with revenues in the District's General Fund in recent years. The District's Department of Public Works, Water and Sewer Utility Administration (WASUA), which is being abolished by the District legislation, had an ending cash balance for FY '94 of some $83 million that was made unavailable by the District for the operation and maintenance of the Blue Plains Wastewater Treatment Facility in FY '95 because the District had used the funds for other purposes. At the recommendation of the control board and with the agreement of the other interested parties, the District is required to repay the new Water and Sewer Authority $83 million. A 4 year plan to do that is incorporated in the District's Financial Plan, which is a legally binding document under PL 104–8. The Control Board has assured the Subcommittee, the participating jurisdictions, and the State of Virginia, that it fully intends to enforce the District's commitment to repay the funds. Congress, of course, retains the ultimate power to enforce repayment, and is the ultimate guarantor since it must approve the annual District budget.

The testimony of Henri N. Gourd, Vice President of MBIA Insurance Corporation, which was made part of the permanent record of the hearing held on June 12, 1996, was very helpful to the Committee. Mr. Gourd stressed the importance of making certain that the new Water and Sewer Authority "* * * be independent from any government body" and that "Control of the revenue stream by the issuing entity is critical to future bondholders." Mr. Gourd mentioned 9 issues related to a future sale of revenue bonds aimed at "maximizing the attractiveness of the securities to the capital markets." It is important that these matters be provided for in the Authority legislation or that the Authority have the power to implement them on its own. These points and how they are addressed are as follows:

1. Fees and charges to the new Authority should be in force and effect at least as long as any of the Authority's bonds are outstanding.

In response to a question Mr. Gourd stated that the June 5 Council amendment to Section 207 of the District bill takes care of this point.

2. The bond market can not be expected to embrace a new bond issue until the Authority becomes a free-standing independent entity.

Mr. Gourd was assured that the Authority will not attempt to sell revenue bonds until long after it is fully operational, and that the Committee will work with the District to make sure that this happens as soon as possible.

3. The Study called for in the bill must be as comprehensive as those done for other new authorities, and for systems operating under EPA consent decrees.

In response to a question, Mr. Gourd acknowledged that it is not necessary for Congress to spell out the type and frequency of such studies, and that the Authority is capable of doing this on its own.

4. The rates must reflect the needs of the system as a whole, "covering expected capital needs, operation and maintenance expenses and debt service expenses by a factor in excess of one."

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are acceptable to satisfy this concern.

5. An "additional bonds test" must be met. This is a coverage test prior to the issuance of additional parity bonds "to protect against dilution of the revenue stream once the initial series of bonds are issued."

In response to a question, Mr. Gourd agreed that the Authority has sufficient motivation to do this and is not precluded from doing so by any provision of the District legislation or of HR 3663.

6. An independent, outside accounting firm "and/or engineering firm" is commonly asked to certify that "projected operating and debt service expenses will be covered by the rates in compliance with bond documents."

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are specific enough, and that the Authority Board can be relied upon to take this step.

7. A "closed loop" is preferable for holders of the revenue bonds.

In response to a question, Mr. Gourd agreed that the June 5 Council amendments are sufficiently strong and clear on this point.

8. Revenue bond holders "prefer a senior claim to the revenues."

Mr. Gourd agreed to work with the Committee if the current language isn't sufficient to do this.

9. A "debt service reserve fund" is recommended "to provide liquidity * * * for water and sewer revenue bonds * * * in any future financing by the Authority."

In response to a question, Mr. Gourd agreed that this would be covered under generally accepted accounting procedures and is specifically allowed under the District legislation.

In response to other questions asked at the hearing, Mr. Gourd agreed that the new Water and Sewer Authority is "substantially independent" and, all else being equal, should get a good rating. Mr. Gourd also agreed that taking the Authority out of the General Fund entirely and letting it collect its own revenues and put them into its own account is adequate to deal with the "control of revenue" issue.

LEGISLATIVE HEARINGS AND COMMITTEE ACTIONS

On June 18, 1996, Mr. Davis introduced H.R. 3663. It was cosponsored by all the members of the Subcommittee on the District of Columbia along with Mr. Hoyer, Mrs. Morella, Mr. Moran, and Mr. Wynn representing the suburban user jurisdictions.

H.R. 3663 was referred to the Committee on Government Reform and Oversight. The Subcommittee on the District of Columbia held hearings on February 23, 1996 and June 12, 1996. The bill was marked-up in the Subcommittee on the District of Columbia on June 18, 1996. There were no amendments offered. The legislation passed the Subcommittee by a voice vote.

The Government Reform and Oversight Committee met on June 20, 1996, to consider H.R. 3663. There were no amendments offered. The bill was reported to the House unanimously by voice vote.

COMMITTEE HEARINGS AND WRITTEN TESTIMONY

February 23, 1996 oversight hearing

On February 23, 1996, the Subcommittee on the District of Columbia, of the Committee on Government Reform and Oversight, met pursuant to notice. The hearing was devoted to oversight issues associated with the District's water and waste water systems. The purpose of the hearing in regard to Blue Plains was to evaluate its over all performance, especially its day-to day operation, maintenance, personnel policies, procurement practices, and compliance with the Environmental Protection Agency (EPA) permits and orders.

Subcommittee Chairman Davis began by stating that the problem of clean and inexpensive water and wastewater treatment affect all of the residents and businesses located in the metropolitan

region. The Chairman went on to say that a failure in the wastewater system might threaten the health of the Chesapeake Bay, the Potomac River, and other vital wetlands, as well as District and suburban residents. He stated that the newly proposed Water and Sewer Authority needed borrowing power in order to implement any reforms. The Chairman then said that the Subcommittee must amend the home rule act if the Water and Sewer Authority is to have borrowing power. Ranking Member Norton agreed that both the Aqueduct and Blue Plains are regional problems which call for bipartisan solutions. She expressed her support for the District's effort to establish a new, independent Water and Sewer Authority.

The first panel of witnesses consisted of Mr. Michael McCabe, the Director of Region III, EPA. Mr. McCabe reviewed the development of the Washington Aqueduct and the Blue Plains Wastewater Treatment Facility. He stated that the Aqueduct is a complex drinking water infrastructure that is old and run by the U.S. Army Corps of Engineers, with its customer base concentrated in the City. The Blue Plains facility is located in and operated by the District. The facility serves the needs of the District and suburban jurisdictions. However, both systems have committed recent and serious permit or federal standards violations; both have been issued Administrative Orders (one is a Proposed Administrative Order) by Region III because of problems with their operations; both present potential threats to the health and safety of their customers; and both are hampered by financial problems.

Mr. McCabe then addressed possible solutions. For the Aqueduct, he stated that the Corps lacks the borrowing/bonding authority necessary to procure additional funding for reforms. For the Blue Plains facility, Mr. McCabe emphasized the importance of the Biological Nutrient Removal Pilot Project, which is vital to the health of the Potomac River and the Chesapeake Bay. He concluded by saying that the EPA has attempted to help the Aqueduct and the Blue Plains facility through technical assistance, administrative orders, court-filed consent orders, unannounced inspections and audits, substantial fines, and jaw boning, but the results have been virtually negligible. Mr. McCabe suggested that Congress give consideration to new financing systems for both institutions, including the establishment of separate accounts for the collection and disbursement of grant payments and revenues for operation and maintenance.

The second panel of witnesses consisted of Mr. Larry King, the Director of the District of Columbia Department of Public Works. Mr. King reported on the quality of the drinking water and wastewater treatment in the District of Columbia. He stated that the City's water is safe, but that many of the water distribution and wastewater system components predated the Civil War, and need to be modernized and properly maintained. Mr. King stated that the District has responded to these problems by developing three proposals to improve the infrastructure of the Blue Plains Wastewater Treatment Plant, the wastewater and combined collection systems, and the water distribution systems. Mr. King spoke in support of the D.C. Water and Sewer Authority Establishment and DPW Reorganization Act of 1996 (Council Act 11–201).

The third panel consisted of Mr. Tom Jacobus, the Chief of Washington Aqueduct, United States Army Corps of Engineers. Mr. Jacobus described the operation and history of the Washington Aqueduct, as well as recent reforms and improvements. Mr. Jacobus then discussed recent problems. The current pay-as-you-go system for capital improvements will not be enough to fund the projects under design and study for the Aqueduct. He also described the Aqueduct's cooperation with the District to implement the reforms in the EPA's Administrative order.

The fourth panel of witnesses consisted of Mr. Erik Olson, the Senior Attorney of the Natural Resources Defense Council and Dr. Peter Hawley, the Medical Director of the Whitman-Walker Clinic. Mr. Olson's testimony focused on the need to make substantial improvements in the District's water system. Dr. Hawley stated that D.C. drinking water was dangerously close to EPA limits for turbidity, and could easily cause illness for many people, especially those who are HIV infected, the debilitated elderly, newborns, individuals undergoing chemotherapy treatment, and those with rheumatoid arthritis or other immunocompromising illnesses.

June 12, 1996 Legislative Hearing

On June 12, 1996, the Subcommittee on the District of Columbia, of the Committee on Government Reform and Oversight, met pursuant to notice. The hearing was intended to evaluate the progress of the Blue Plains wastewater treatment facility since the last hearing on February 23, 1996, to examine the District's proposal for a Water and Sewer Authority, and to obtain testimony on draft Congressional legislation necessary for the full implementation of the proposed Water and Sewer Authority.

Subcommittee Chairman Davis began by commending the District government for passing legislation establishing the Water and Sewer Authority (District of Columbia Act 11–201), a self-funding, independent agency and for the improvements resulting from the June 5, 1996 amendments. The Authority is being created to improve wastewater treatment for the District and surrounding Virginia and Maryland jurisdictions as well as the maintenance of the District's water distribution system. Furthermore, the Authority is being established with voting Board representatives from suburban jurisdictions who use the facility. Chairman Davis emphasized that the Authority will be prohibited from transferring money to the District's General Fund, except for the acceptable arrangement for the Authority to pay the debt service on outstanding General Obligation bonds issued for water and sewer purposes. Mr. Davis acknowledged congressional action was necessary before the newly created Authority could issue revenue bonds. Ranking Member Norton expressed her gratitude to Chairman Davis for allowing the local stakeholders to work out a solution to the Water and Sewer Authority. She also spoke in favor of amending the home rule act to permit the Council to authorize the Water and Sewer Authority to issue revenue bonds.

The first panel of witnesses consisted of Rep. Steny H. Hoyer, who expressed his approval of the creation of the Authority, which will aid the Blue Plains facility in the protection of human and environmental health, as well as daily operations, proper equipment,

financial stability, and sufficient staffing levels. Mr. Hoyer expressed his concern about past transfers from the District's Water and Sewer Enterprise Fund to the city's General Fund. He stated that the District should return the funds removed from the Water and Sewer Enterprise Fund, and that the new Water and Sewer Authority should be prevented from this type of transfer. Mr. Hoyer then expressed support for the revenue bond legislation being considered.

The second panel of witnesses consisted of Mr. Michael Rogers, the City Administrator of the District and Mr. Larry King, Director, DC Department of Public Works. Mr. Rogers began by stating that, when amending the home rule act, Congress should deal only with provisions relating to the Authority's bonding needs or other necessary Congressional actions, and should leave all other issues to the discretion and control of home rule government.

Specifically, Mr. Rogers objected to a Congressional amendment requiring an eight vote majority on budget matters of joint-use facilities (intended to increase suburban participation). He felt this was unnecessary since the District's legislation was all ready created with suburban consultation. The District legislation was approved by the Mayor, the Council, the control board, the suburban jurisdictions, and allowed to become law by the Congress. Mr. Rogers also pointed out several errors in the draft Congressional legislation and asked the Subcommittee to work with the District to straighten them out. Mr. King spoke in favor of the District legislation as amended.

The third panel consisted of the Honorable Katherine Hanley, Chairman of the Fairfax County Board of Supervisors, Mr. Bruce Romer, Chief Administrative Officer of Montgomery County, and Mr. Howard Stone, Chief Administrative Officer of Prince Georges County, Maryland. Ms. Hanley expressed her support of the revised eleven member Authority with five members from the suburban jurisdictions. In the long term, the Fairfax Board of Supervisors would like a separate Regional Authority to operate Blue Plains and joint-use facilities, without concern for the city's water and sewer system. Although there were other improvements the Board asked for in the District's legislation, she supports the creation of a Water and Sewer Authority as an important first step.

Mr. Romer testified on behalf of himself and Mr. Stone. He stated that Blue Plains handles about 94% of the wastewater flows from Montgomery County and about 54% of the flows from Prince George's County, as part of the Inter Municipal Agreement of 1985 (IMA). Mr. Romer said that the two counties have a considerable stake in the pending legislation; suburban residents use 50% of the allocated capacity for Blue Plains, and have paid $346 million in capital investment in the Blue Plains facility. He also stated that suburban residents supported a separate Regional Authority in the long term, but supported suburban participation on the Authority's Board of Directors in the short term. He supported Congressional legislation to give the Water and Sewer Authority revenue bond power.

The fourth panel consisted of Mr. Michael McCabe, the Region III Administrator of EPA, and Mr. Henri Gourd, Vice President/Manager of MBIA Insurance Corporation. Mr. McCabe expressed

EPA's support for this legislation and said that the independent Water and Sewer Authority, as amended by the Council on June 5, 1996 should significantly improve the operation and maintenance of Blue Plains. Mr. McCabe also stressed the importance of the particular amendment making clear that the Water and Sewer Authority is the successor of WASUA and is the permit holder for Blue Plains. He also endorsed revenue bond power for the Authority. Mr. Gourd discussed the opportunities for the Authority in the bond market, from his perspective as a municipal bond insurer. There are two key issues for the bond market. First, the Authority must be an independent agency of the District's government so that its credit rating will not be linked to the District's. Second, the Authority must control its own revenue, so its bondholders will be assured of its financial security. He also listed nine important issues for the Authority to secure the most favorable bond rating.

Written testimony was received from the District of Columbia Financial Responsibility and Management Assistance Authority's (control board) Executive Director, Mr. John W. Hill, Jr. Mr. Hill's testimony supported the Council's creation of an independent Water and Sewer Authority as it was amended on June 5, 1996. The amended version of the District legislation effectively addressed the previously stated concerns of the control board in regard to the financing and membership of the proposed Water and Sewer Authority. Mr. Hill also expressed the control board's approval for the goal of the congressional legislation. He did, however, express his reservations about several details of the proposed legislation and noted that these may have been inadvertent. Mr. Hill asked the Subcommittee to work with the control board staff to perfect the Congressional legislation.

EXPLANATION OF THE BILL

H.R. 3663 amends the District of Columbia Governmental Organization and Reorganization Act (PL 93–198) to permit the District of Columbia government to issue revenue bonds for water and sewer facilities, and for other related purposes. This is necessary in order to implement legislation already passed by the District of Columbia Council, as signed by the Mayor, and approved by the Control Board under PL 104–8, creating the District of Columbia Water and Sewer Authority (Act 11–201, amended by Emergency Act on June 5, 1996). After submission to Congress, the legislation was permitted to become District law on April 18, 1996.

H.R. 3663 accomplishes the intent of Congress to allow the issuance of revenue bonds for water and sewer purposes by the District of Columbia and to permit the District Government to delegate the power being vested to the new Water and Sewer Authority. Other related provisions prevent the District Government from altering the Authority's budget and exempts bond proceeds and repayments from being part of the District's appropriations process. The legislation also removes both the revenues of the Water and Sewer Authority and outstanding General Obligation bonds issued for water and sewer purposes from the calculation of the District debt ceiling.

Under existing law the District government already has the power to issue General Obligation bonds for any legitimate purpose. Section 490 of the Home Rule Act gives the District power to

issue revenue bonds only for certain specified purposes. But the District lacks the power to sell revenue bonds for water and sewer purposes, and may not provide that any revenues of the new Water and Sewer Authority be used to pay off any revenue bonds issued for those purposes. The power to do that can only be conferred by a statutory enactment of Congress, as signed by the President. Should that power be conveyed by statute, which is the purpose of H.R. 3663, then the Council may, and by it's aforesaid enactments already has, delegate that power to another District entity—in this instance the new Water and Sewer Authority. Under this bill the District government need not then further approve any bonds lawfully sold by the Water and Sewer Authority.

Under existing law the District of Columbia has a debt ceiling specified in the home rule act. The District is not permitted to have outstanding debt service higher that 14% of expected revenues. H.R. 3663 removes revenues of the new Water and Sewer Authority from the General Fund, effectively making them "off budget". What this does is to reduce the amount of General Obligation debt the District can assume. Up to $350 million of the current General Obligation debt was for water and sewer purposes. Under the District legislation (Council Act 11–201, as amended) the new Water and Sewer Authority must pay the debt service on the outstanding debt for water and sewer purposes, about $38 million each year. This means that the existing General Obligation bonds for water and sewer purposes will no longer be the responsibility of the General Fund, but will be the responsibility of the new Water and Sewer Authority. Therefore, this debt should also be removed from the debt ceiling calculation.

The General Obligation bonds issued for water and sewer purposes and its annual debt service will be identified in the audit required in the District legislation. The Committee expects this audit to be conducted by an independent consultant well qualified to conduct such work. The Committee also expects for the Board of the Water and Sewer Authority to be consulted with and to accept the audit report for this matter and also for the identification of WASUA spending over the years, personnel, and equipment for which the Authority will be asked to repay the District under the provisions of the District legislation. This audit must also include the value of services rendered to the District which were not paid for such as free water service to the District government and any other such items. Any disputes or disagreements between the Board and the District government on these matters should be settled to the satisfaction of both bodies. The Committee notes that it retains both oversight and legislative power over the District and the Water and Sewer Authority and that Congress must approve the District and Water and Sewer Authority budget. Therefore, any unresolved issues between the parties may be subject to Congressional action.

The new Water and Sewer Authority being created is independent, self-funded, and not in the General Fund of the District of Columbia budget. H.R. 3663 therefore takes the Authority out of the District's budget process. Other than nominating and confirming Board members for the Authority, the Mayor and Council will have no other role to play by way of exercising influence over the Au-

thority. While the Mayor and Council may comment on the budget, they can not change it. It is Congress alone that may change the Authority's budget under H.R. 3663, and Congress alone will be authorizing and appropriating the Authority's budget. As a necessary corollary, the Authority will be exempt from the mid-year budget reductions which may be ordered by the Mayor.

The Committee notes with favor that the Water and Sewer Authority is not only allowed, but is mandated to develop its own personnel and procurement systems. These provisions along with taking the Authority off budget will overcome past personnel problems caused by FTE caps and hiring freezes. Getting the Authority out from under the District's cumbersome and ineffective procurement system is expected to greatly improve the efficiency and cost savings available through good management and competitive bidding without an onerous overlay of Council enacted set asides and special considerations. The Committee expects the Authority to use its power in the area of personnel and procurement to aggressively pursue the best service at the lowest cost. The Committee included an amendment to the District legislation (Section 5 of H.R. 3663) to clarify that WASUA personnel transferred to the Water and Sewer Authority will only have their compensation guaranteed until the new personnel policy is put in place or until new labor agreements are entered into. The Committee agrees to allow transferred employees to maintain their compensation until the new personnel system is implemented, but will not agree to maintain employees compensation if their responsibilities or classification are reduced under the new system.

In addition, the Committee supports the provisions of Act 11–201, as amended, which call for quick action on possible contracting out of various parts of the operation and maintenance of Blue Plains and the water and sewer pipes of the District. The June 5 Council amendments together with consensus language in HR 3663 allow the Authority, on its own, to contract everything including general management of Blue Plains. The only action which the Authority cannot take is to sell or lease the entire Blue Plains Wastewater Facility, which is appropriate because the District retains title to Blue Plains and the Mayor and Council would have to approve a sale or lease.

The question of the equity status of Blue Plains is left unresolved. Since the Maryland and Virginia counties have received EPA constuction grants and contributed them to Blue Plains and have partly paid for capital projects through their wholesale rate payments to the District there is disagreement with the District's position that it has sole claim to an equity interest in Blue Plains. This issue was not resolved by the 1985 Intermunicipal Agreement (IMA) and has remained unresolved and untested in the courts since then. The Committee declined to resolve this complex issue legislatively at this time. The asset equity question along with numerous other important questions such as going to a true regional authority and the potential inclusion of the Washington Aqueduct is to be dealt with in a major Study. The study is to be contracted for by the Water and Sewer Authority shortly after it is formally set up. The suburban jurisdictions, through their representatives on the Board, are to have substantive input in writing the Request

For Proposal, setting the parameters of the Study, and reviewing and commenting on any draft Report before it becomes final. The Committee expects the District government to fulfill its committment to the other jurisdictions and to the Congress on the Study.

Also, unspecified in the District or Congressional legislation is an exact structure or list of issues on which various components of the Board may vote. The Authority is really a bi-fucated body since it is responsible for purely District items (water and sewer pipes) and for considerable joint use facilities; and because the Board will consist of both District members and suburban members. The suburban Board members may not vote on matters affecting purely District issues, but may vote on all matters affecting the "general management" of any joint use facilities. The Committee understands that "general management" is a term of art in this context and that this language has been agreed to by all the parties. A similar question arises about bond issues since bonds may be sold for purely District purposes and for joint use facility purposes. Again, the Committee understands that all the parties are aware of the issues to be dealt with by the Water and Sewer Authority and are willing to work together to resolve them. The Committee is aware that goodwill and comity can easily overcome any lack of specifics in an organizational charter while lack of those qualities can render inoperable the best and most carefully designed structure. It is expected and anticipated that the Board will work together, in its own self interest, to resolve these questions in a friendly spirit of regional cooperation. If the Authority is able to work together to improve the operation of the area's largest environmental facility then further efforts at this type of close regional partnerships may become more prevalent.

The Committee is very pleased that the Council amendments of June 5, 1996 guaranteed the complete fiscal independence of the Water and Sewer Authority. By allowing the Authority to collect its own revenues and deposit them directly with its own trustee, the District government has removed itself from even a pass through role in handling these funds and guarantees that no District official, including the Council, may divert those funds for other purposes. This is the most important feature in signalling a true transformation in the District government structure and delivery of services.

In the past the District government has acted cavalierly towards its water and sewer system and too often has granted unfortunate favors or special treatment to some at the expense of the ratepayers. For instance, the Council has routinely exempted churches and other tax-exempt organizations from paying for water. Similarly, the District government does not pay for water it uses in its faclilties. Large apartment complexes cannot have their water shut off no matter how much money they owe for water because the government does not allow water service to be cut off for people who are not responsible for paying the bills. Because of these and other actions of the District government, there is currently an uncollected backlog of more than $30 million in unpaid water bills. The Committee takes special note of these issues and the fact that the District legislation grants the Water and Sewer Authority power to

deal with each of them. The Committee strongly encourages the Authority to require all users of water and sewer service to pay their fair share, to be fair but tough about letting individuals or businesses fall far behind in paying their bills, and to charge the District government for its water and sewer service or make an arrangement to offset and revenues foregone. Only in this way will all ratepayers be able to feel that they are asked only to pay for what they use and that they are not subsidizing someone else who could afford to pay.

The Committee thanks Mayor Barry for his vision for proposing such a radical transformation of the water and sewer services of the District and for his willingness to include voting members on the Board from other jurisdictions. This is a major step forward in regional cooperation. City Administrator Rogers has been both persistent and flexible in his dealings with the other jurisdictions and with the Committee. He deserves praise for reaching an agreement that all parties are willing to participate in at least as an interim measure. The Maryland and Virginia county governments on both the elected official and staff levels have shown toughness and attention to detail both large and small while maintaining a willingness to keep the important objective of improving Blue Plains in mind. The Committee hopes that this process and this legislation—both Council Act 11–201, as amended, and H.R. 3663—are the end of the beginning in protecting the environment, improving water and sewer service for the Washington area, and a new spirit of regional cooperation.

Concerns have been raised that since the Water and Sewer Authority is only a creation of the District government, the Council could amend the statue in the future in unfavorable ways. The Committee observes that Congress retains ultimate oversight and legislative power over the District and its legislative acts by the Constitution and PL 93–198. All Council acts must undergo Congressional review. Congress remains the watchdog of the District. The Committee commits itself to careful monitoring of the Water and Sewer Authority as it moves forward. It will do anything it can to help or improve the prospects of the Authority, and will be vigilant in looking for problems or attempts to subvert the performance of the Authority.

The Committee anticiaptes that when H.R. 3663 is considered by the House there will be an amendment in the nature of a substitute. This amendment consists solely of technical and conforming changes and no policy changes are anticipated. Therefore, pending unexpected amendments by the House or in the Senate, this Report fully reflects the legislation which will be passed and will not become irrelevant because it addresses substantially different than that which becomes law.

SECTION BY SECTION ANALYSIS

Section 1: Short Title. The Act may be cited as the "District of Columbia Water and Sewer Authority Act of 1996."

Section 2: Permits the issuance of revenue bonds for wastewater treatment activities. Currently, the District Government does not have the power to sell revenue bonds for water and sewer purposes, nor to provide that the revenues of the Water and Sewer Authority

may be used to pay off revenue bonds for those purposes. Only Federal statutory law can do this. After the District is granted this power it may (and in this instance already has, in the form of its enacted law) delegate that power to another District entity—in this case the new Water and Sewer Authority. Thus, this Section amends Section 490 of the Home Rule Act to allow revenue bonds to be used for water and sewer purposes (Subsection (a)), allow Water and Sewer Authority revenues to be used to pay for revenue bonds (Subsection (b)), and permits the District to delegate full power to sell bonds without further District Council approval to the Water and Sewer Authority and to remove the proceeds of bonds and funds obligated to secure or pay debt service on bonds from the appropriation process (Subsection (c)).

Section 3: Treatment of revenues and obligations. Removes the revenues of the Water and Sewer Authority and the outstanding General Obligation debt attributable to water and sewer purposes from the calculation of the District's debt service ceiling.

Section 4: Treatment of the budget of the new Water and Sewer Authority. As the new Water and Sewer Authority is independent, self-funding, and not in the General Fund, it is thus appropriate to remove it from the regular budget process. The Mayor and Council may comment on the Authority budget, but can not change it. This is the same way the budget for the courts is treated. Congress may change and must appropriate the new Water and Sewer Authority budget. As an independent, self-funded operation, the new Authority will be exempt from any mid-year budget reductions ordered by the Mayor.

Section 5: Clarification of compensation of current employees of the Department of Public Works. This is to conform transferred employees to the new personnel system or to new collective bargaining agreements.

Compliance With Rule XI

Pursuant to rule XI, clause 2(l)(3)(A), of the Rules of the House of Representatives, under the authority of rule X, clause 2(b)(1) and clause 3(f), the results and findings for those oversight activities are incorporated in the recommendations found in the bill and in this report.

Budget Analysis and Projections

This Act provides for no new authorization or budget authority or tax expenditures. Consequently, the provisions of section 308(a)(1) of the Congressional Budget Act are not applicable.

Cost Estimate of the Congressional Budget Office

The Committee was provided the following estimate of the cost of H.R. 3663, as prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1996.

Hon. WILLIAM F. CLINGER, JR.,
Chairman, Committee on Government Reform and Oversight,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3663, the District of Columbia Water and Sewer Authority Act of 1996, as ordered reported by the House Committee on Government Reform and Oversight on June 20, 1996. Based on information provided by the Joint Committee on Taxation, CBO estimates that H.R. 3663 would have no direct impact on the federal budget. Therefore, pay-as-you-go procedures would not apply.

H.R. 3663 would:

authorize the issuance of revenue bonds, notes, or other obligations by either the Council of the District of Columbia, or if the Council delegates this authority, by the District of Columbia Water and Sewer Authority to finance water and wastewater treatment facilities;

exclude certain estimated revenues and certain estimated principal and interest payments from the calculation of the amount of debt issuance available to the District of Columbia;

require the Water and Sewer Authority to submit to the Mayor each year its estimate of the necessary expenditures and appropriations for the following fiscal year; and

clarify the compensation of the current employees of the District of Columbia's Department of Public Works.

H.R. 3663 would have no direct budgetary impact on the federal government. The bill would remove from the District's calculation of its available debt capacity both the estimated revenues and the Water and Sewer Authority and the estimated principal and interest payments on general obligation bonds issued by the Water and Sewer Utility Administration within the Department of Public Works prior to fiscal year 1997. Under current law, the District cannot issue an amount of long-term general obligation debt, other than refunding debt, at would cause the estimated payment of principal and interest on the District's total outstanding debt in any fiscal year to exceed 14 percent of the revenues estimated for the fiscal year in which the debt would be issued. Thus, by excluding from this calculation certain principal and interest payments, H.R. 3663 would likely result in the District issuing more general obligation debt than it would under current law. The Joint Committee on Taxation has determined that this change would have no direct effect on federal receipts.

H.R. 3663 contains no intergovernmental or private-sector mandates as defined in Public Law 104–4, and would impose no direct costs on state, local or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

JUNE E. O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(l)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

CHANGES IN EXISTING LAW

Clause 3 of rule XIII of the Rules of the House of Representatives requires that any change in existing law made by the bill, as reported, be shown with the existing law proposed to be omitted enclosed in black brackets, new matter printed in italic, and existing law in which no change is proposed shown in roman type.

COMMITTEE RECOMMENDATION

On June 20, 1996, a quorum being present, the Committee ordered the bill, as amended, favorably reported.

Committee on Government Reform and Oversight—104th Congress Rollcall

Date: June 20, 1996.

Final Passage of H. R. 3663.

Offered By: Mr. Davis.

Voice Vote: Ayes.

CONGRESSIONAL ACCOUNTABILITY ACT; PUBLIC LAW 104–1; SECTION 102(B)(3)

This provision is inapplicable to the legislative branch because it does not relate to any terms or conditions of employment or access to public services or accommodations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

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TITLE IV—THE DISTRICT CHARTER

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PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

* * * * * * *

SUBMISSION OF ANNUAL BUDGET

SEC. 442. (a) * * *

* * * * * * *

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, [and] the Commission on Judicial Disabilities and Tenure[.], *and the District of Columbia Water and Sewer Authority.*

* * * * * * *

WATER AND SEWER AUTHORITY BUDGET

SEC. 445A. The District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to sections 446 and 603(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates, but shall have no authority under this Act to revise such estimates.

ENACTMENT OF APPROPRIATIONS BY CONGRESS

SEC. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. Except as provided in section 467(d), section 471(c), section 472(d)(2), section 483(d), and subsections [(f) and (g)(3)] *(f), (g)(3), and (h)(4)* of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any

other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

* * * * * * *

REDUCTIONS IN BUDGETS OF INDEPENDENT AGENCIES

SEC. 453. (a) * * *

* * * * * * *

(c) Subsection (a) shall not apply to amounts appropriated or otherwise made available to the District of Columbia [courts or the Council, or to] *courts, the Council,* the District of Columbia Financial Responsibility and Management Assistance Authority established under section 101(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995[.], *or the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996.*

* * * * * * *

Subpart 5—Tax Exemption; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

* * * * * * *

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490. (a)(1) The Council may by act authorize the issuance of revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, to refinance, or to assist in the financing or refinancing of, undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, college and university programs which provide loans for the payment of educational expenses for or on behalf of students, pollution control facilities, [and] industrial and commercial development[.], *and water and sewer facilities (as defined in paragraph (5)).* Any such financing or refinancing may be effected by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

* * * * * * *

(3) Any revenue bond, note, or other obligation, issued under paragraph (1) shall be paid and secured (as to principal, interest, and any premium) as provided by the act of the Council authorizing the issuance of such bond, note, or other obligation. Subject to subsection (c), any act of the Council authorizing the issuance of

such bond, note, or other obligation may provide for (A) the payment of such bond, note, or other obligation from any available revenues, assets, or property *(including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities)*, and (B) the Securing of such bond, note, or other obligation by the mortgage of real property *(including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities)* or the creation of any security interest in available revenues, assets, or other property *(including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities).*

* * * * * * *

(5) In paragraph (1), the term "water and sewer facilities" means facilities for the obtaining, treatment, storage, and distribution of water, the collection, storage, treatment, and transportation of wastewater, storm drainage, and the disposal of liquids and solids resulting from treatment.

* * * * * * *

(h)(1) The Council may delegate to the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 the authority of the Council under subsection (a) to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing or refinancing of undertakings in the area of utilities facilities, pollution control facilities, and water and sewer facilities (as defined in subsection (a)(5)). The Authority may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after the date of the enactment of this subsection) only in accordance with this subsection.

(2) Revenue bonds, notes, and other obligations issued by the District of Columbia Water and Sewer Authority under a delegation of authority described in paragraph (1) shall be issued by resolution of the Authority, and any such resolution shall not be considered to be an act of the Council.

(3) The provisions of subsections (a) through (e) shall apply with respect to the District of Columbia Water and Sewer Authority, the General Manager of the Authority, and to revenue bonds, notes, and other obligations issued by the Authority under a delegation of authority described in paragraph (1) in the same manner as such provisions apply with respect to the Council, to the Mayor, and to revenue bonds, notes, and other obligations issued by the Council under subsection (a)(1) (without regard to whether or not the Council has authorized the application of such provisions to the Authority or the General Manager).

(4) The fourth sentence of section 446 shall not apply to—

(A) any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this subsection;

(B) any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this subsection;

(C) any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this subsection; or

(D) any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this subsection.

* * * * * * *

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

* * * * * * *

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) * * *

(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, *any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes),* retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale or general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowing from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 2501, title 47 of the District of Columbia Code, as amended.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), [and] obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, *and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects,* shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, *any revenues, charges, or*

fees dedicated for the purposes of water and sewer facilities described in section 490(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement, contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds *(less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects)* and such Treasury loans.

* * * * * * *

SECTION 205 OF THE WATER AND SEWER AUTHORITY ESTABLISHMENT AND DEPARTMENT OF PUBLIC WORKS REORGANIZATION ACT OF 1996

SEC. 205. DUTIES OF THE BOARD.

(a) * * *

* * * * * * *

(b)(1) * * *

(2) Department of Public Works employees whose salaries are funded by the Water and Sewer Utility Administration shall become employees of the Authority without impairment of civil service status and seniority, reduction in compensation (notwithstanding any change in job titles or [duties)] *duties, and except as may otherwise be provided under the personnel system developed pursuant to subsection (a)(4) or a collective bargaining agreement entered into after the date of the enactment of this Act)* or loss of accrued rights to holidays, leave, and benefits. All employees of the Authority shall perform their duties under the direction, control, and supervision of the Authority; provided, however, that any employee subject to transfer whose existing duties and responsibilities are determined by the Authority and the Department of Public Works to relate directly and primarily to functions of the Department of Public Works, and for whom a position at the Department of Public Works is funded in whole or in part, shall remain an employee of the Department of Public Works and shall continue to perform duties under the direction, control, and supervision of the Department of Public Works and not under funding arrangements thereafter derived from the accounts of the Authority.

○

Mr. VAN HOLLEN. Fortunately, those earlier problems that plagued Blue Plains are over and behind us; however, much of WASA's success can be attributed to the new regional authority and design that was established earlier by the work of the Congress to make sure that it is run as an independent, professional enterprise that is accountable to the entire region that it serves.

It should be noted that the suburban jurisdictions of Maryland and Virginia contribute in excess of $100 million a year to WASA. It is important to ensure that sufficient controls are build into the system to prevent a future commingling of the funds between WASA's user fees and the funds of the participating jurisdictions.

I believe, as Ms. Norton has said, that it is essential to WASA's continued success to maintain its regional autonomy.

The Home Rule Act that established the District of Columbia's CFO has created ambiguity regarding the relationship between the WASA CFO and the D.C. CFO, and two recent enactments of the D.C. government served just to cloud the question of WASA's independence.

I am pleased to have been working with Ms. Norton and Mr. Davis and others to resolve these conflicts and to ensure WASA's independence. I appreciate the letters and work of Ms. Norton and her communications with the D.C. Council in that regard.

We need to put these conflicts regarding governance behind us so that we as a region are better able to confront the formidable undertakings that lay before us.

As has been said, this subcommittee has had hearings on this subject in the past, and hopefully with the chairman's indulgence will continue to have them going forward to really address the very serious issues that confront WASA. But resolving this governance issue is essential to that success.

WASA is currently contemplating massive upgrades to the region's sewage and wastewater treatment infrastructure. These are changes that are necessary to prevent raw sewage, in addition to nitrogen discharge, from contaminating our rivers and ultimately the Chesapeake Bay.

In working with Ms. Norton and Mr. Davis and others, I have introduced a bill, H.R. 5778, that will clarify the independence of WASA's CFO and clarify WASA's personnel procurement and financial management powers and make it clear that they should be regulated by its regional board of directors.

We look forward to working with the D.C. City Council to ensure that recently passed legislation that provides personnel preferences to D.C. residents does not apply in this regional organization, and look forward to continuing to work with them in this regard.

I am looking forward to the testimony of the members of the panels that we are going to hear from today, and look forward to moving forward to address the important regional issues that we are going to be hearing about.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Chris Van Hollen follows:]

STATEMENT OF CHRIS VAN HOLLEN

OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON

FEDERAL WORKFORCE, POSTAL SERVICE, AND

DISTRICT OF COLUMBIA

APRIL 15, 2008

I want to thank the Chairman and Ranking Member for holding this hearing today to focus on the DC Water and Sewer Authority. I also want to thank the Chairman for allowing me the opportunity to join the subcommittee in its oversight of WASA as well as its operations of Blue Plains Waster water Treatment Plant. While I am not a member of this Subcommittee, WASA has a direct bearing on my constituents as users, employees and rate payers.

Moreover, as a Co Chair of the Chesapeake Bay watershed task force, I work to reduce point source and non-point source contamination of the Chesapeake Bay and its rivers and support the increase in environmental safeguards of the water that enters and exits Blue Plains. So, I greatly appreciate the courtesy of permitting my participation in this important hearing today.

WASA has come a long way from the days of environmental and financial mismanagement that plagued its predecessor agency. Before its creation, the Blue Plains wastewater treatment plant was continually cited by the EPA and the Justice Department for its contamination of the local waterways. In addition, the Justice Department cited the former agency for its diversion of $96 million, in FY 95, from the Operations and Maintenance of this

regional waste water treatment center into the DC's General Fund.

It was this dysfunctionality and misuse of Regional user fees that led to WASA's creation. It was largely due to the foresight of Members of this Committee, Congresswoman Norton and Congressman Tom Davis, who crafted a solution. They created WASA as a utility within DC but with independent financial, personnel and procurement operations authority, to be governed by an independent Board of Directors. This Board is comprised of members from each participating jurisdiction in DC, Maryland and Virginia in fact, the principal Board Members from each participating jurisdictions are the Chief Administrative Officers for their respective localities. The House Report 104-635, from this Committee in 1996 reflects the hard

work of this Committee to establish WASA as an independent entity. I request that it be included into the record today.

Fortunately, the days of the diversion of user-fees from the maintenance of Blue Plains to DC's treasury are long behind us. However, much of WASA's success can be directly attributed to the fact that it is run like an independent professional enterprise that is accountable to the entire region that is serves. It should be noted that the suburban jurisdictions contribute in excess of $100 million a year to WASA. We must ensure that sufficient controls are built into the system to prevent a future commingling of funds between WASA's user-fees and the funds of the participating jurisdictions.

I believe that it is essential to WASA's continued success to maintain its regional autonomy. The Home Rule Act that established the District of Columbia's CFO has created an ambiguity regarding the relationship between the WASA CFO and the DC CFO. Two recent enactments by the DC Government served to further cloud WASA's independence.

I have been working with Congresswoman Norton and Congressman Tom Davis to resolve these conflicts and to reestablish WASA's independence. We need to put these conflicts regarding governance behind us so that we, as a region, are better able to confront the formidable undertakings that lay before us. WASA is contemplating massive upgrades to the regions sewage and waste water treatment infrastructure. These changes are necessary to

prevent raw sewage, in addition to nitrogen discharge, from contaminating our rivers and ultimately the Chesapeake Bay.

In working with Congresswoman Norton, Congressman Davis and I have introduced a bill, HR 5778, that will clarify the independence of WASA's CFO. Moreover, it will clarify that WASA's personnel, procurement and financial management should be regulated by its regional Board of Directors. We look forward to working with the DC City Council to ensure that recently passed legislation that provides personnel preference to DC residents does not apply to this Regional organization.

I look forward to hearing from our esteemed panelists today as we chart a course to resolve the problems that

WASA is currently facing so that we may enable it to tackle the more vexing problems that compromise this region's public health and the health of our environment.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Van Hollen. Without objection, your request will be included in the record.

We will now move to our first witness. Mr. John Stephenson is the Director of Natural Resources and Environment Issues for the U.S. Government Accountability Office. Mr. Stephenson's work focuses on diverse environmental protection issues such as clean air, clean water, safe drinking water, safe chemical controls, toxic substances, climate change, Superfund, and hazardous materials' spill prevention and cleanup, as well as critical infrastructure protection.

Thank you, Mr. Stephenson.

It is our tradition that witnesses before the committee be sworn in.

[Witness sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witness answered in the affirmative.

Thank you very much, Mr. Stephenson, and we will proceed. Of course, you know that we try to do this in 5 minutes, and then we will have questions. We will use the light. Please go right ahead.

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STEPHENSON. Thank you, Mr. Chairman and members of the subcommittee. I am pleased to be here today to participate in this oversight hearing of the D.C. Water and Sewer Authority [WASA]. I will summarize GAO's reports on WASA's efforts to reduce lead exposure in drinking water, but I want to put my comments into context by summarizing other GAO work on the many challenges facing all large water utilities like WASA across the Nation.

As we all remember, media reports in early 2004 about lead contamination in the District's drinking water raised serious concerns about the health risk posed from existing lead service lines and about how well local and Federal agencies were carrying out their responsibilities.

After much debate, WASA ultimately signed a consent decree to improve water sampling, enhance public education, and identify and replace lead service lines. WASA undertook a $400 million program to replace roughly 35,000 lines by 2016 and provided incentives to encourage homeowners to replace their portion of the lines. It also added orthophosphate to the water supply. This treatment causes the formation of a protective coating inside the lines that helps prevent lead from leaching into the water.

So where are we today? WASA has replaced their portion of 14,260 lead service lines through the first quarter of fiscal year 2008; however, of these, only 2,128 homeowners participated in the private side replacement. To be effective, homeowners must spend up to $2,500 to replace their portion of the lines, but most are, for a variety of reasons, deciding not to do so.

Many questions remain about the benefits of partial lead service line replacement. Research suggests that short-term spikes in lead levels occur immediately after partial replacement, and little long-term reduction in lead levels is achieved. This, coupled with the fact that for the past 3 years the drinking water has consistently

tested below the Federal action level of 15 parts per billion for lead in drinking water, largely due to the introduction of orthophosphate into the water supply in 2004, make it understandable why WASA, after spending $105 million on this program, is re-evaluating the merits of spending an additional $300 million to replace the remaining 21,000 service lines.

As important as the lead contamination problem has been to WASA and its customers, it is by no means the only issue with which the utility must grapple. WASA is responsible for operation and maintenance of not only the drinking water infrastructure, but also the wastewater treatment and sanitary sewer systems. Some of the components of these systems date back to the early 19th century, and the infrastructure replacement costs are staggering. Over 700 million over the next 10 years to maintain the drinking water system, another 2.2 million over the next two decades to meet the EPA's mandate to address combined sewer overflow problems, for example.

WASA's difficulties in meeting its many fiscal demands are mirrored across the country by some 53,000 drinking water utilities, 17,000 municipal wastewater facilities, and 7,000 communities served with storm sewer collection system. Water infrastructure needs nationwide are estimated to range from $485 billion to nearly $1.2 trillion over the next 20 years.

A few years ago we conducted a survey over several thousand drinking water and wastewater utilities and found that 29 percent of the drinking water utilities and 41 percent of the wastewater utilities were not generating enough revenue from user rates and other local sources to cover the full cost of service. We also found that about one-third of the utility's deferred maintenance because of insufficient funding had 20 percent or more of their pipelines nearing the end of their useful life and lacked basic plans for managing their capital assets.

The Federal Government has a significant impact on the Nation's drinking water and wastewater infrastructure. EPA has promulgated regulations to implement the Safe Drinking Water Act and the Clean Water Act, and the cost of compliance with these regulations are high.

Last year Congress appropriated about $1.5 billion that EPA grants to the States to capitalize the revolving loan funds. Utilities can use these funds to finance improvements to drinking water and wastewater treatment facilities; however, this is only a small portion of what is needed.

Some argue that because of the high cost of compliance with requirements the Federal Government should do more. Others argue that it is the customer who enjoys the benefits of clean water that should assume a larger share of the infrastructure repair and replacement costs by paying higher rates. The truth is probably somewhere in between.

One thing is clear: the fiscal challenges facing water utilities are not likely to be resolved any time soon.

Mr. Chairman, that concludes the summary of my statement. I will be happy to answer questions from you or any members of the subcommittee.

[The prepared statement of Mr. Stephenson follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Committee on Oversight and Government Reform, U.S. House of Representatives

For Release on Delivery
Expected at 2 p.m. EDT
Tuesday, April 15, 2008

DRINKING WATER

The District of Columbia and Communities Nationwide Face Serious Challenges in Their Efforts to Safeguard Water Supplies

Statement of John B. Stephenson, Director
Natural Resources and Environment

GAO-08-687T

April 15, 2008

GAO
Accountability • Integrity • Reliability

Highlights

Highlights of GAO-08-687T, a testimony before the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Committee on Oversight and Government Reform, U.S. House of Representatives

DRINKING WATER

The District of Columbia and Communities Nationwide Face Serious Challenges in Their Efforts to Safeguard Water Supplies

Why GAO Did This Study

The discovery in 2004 of lead contamination in the District of Columbia's drinking water resulted in an administrative order between the Environmental Protection Agency (EPA) and the District's Water and Sewer Authority (WASA), requiring WASA to take a number of corrective actions. WASA also took additional, longer-term measures, most notably a roughly $400 million program to replace what may be 35,000 lead service lines in public space within its service area.

As in WASA's case, water utilities nationwide are under increasing pressure to make significant investments to upgrade aging and deteriorating infrastructures, improve security, serve a growing population, and meet new regulatory requirements.

In this context, GAO's testimony presents observations on (1) WASA's efforts to address lead contamination in light of its other pressing water infrastructure needs, and (2) the extent to which WASA's challenges are indicative of those facing water utilities nationwide.

To address these issues, GAO relied primarily on its 2005 and 2006 reports on lead contamination in drinking water, as well as other recent GAO reports examining the nation's water infrastructure needs and strategies to address these needs.

To view the full product, including the scope and methodology, click on GAO-08-687T. For more information, contact John B. Stephenson at (202) 512-3841 or stephensonj@gao.gov.

What GAO Found

With the introduction of orthophosphate to its drinking water WASA has consistently tested below the federal action level for lead. However, WASA is reevaluating its roughly $400 million, longer-term solution for replacement of what may be 35,000 lead service lines within its jurisdiction. In addition to the program's high cost, a key problem WASA faces is that, by law, it may only replace the portion of the service line that it owns; replacing the portion on private property is at the homeowner's discretion. Accordingly, WASA has been encouraging homeowners to participate in the program by replacing their own portion of the lead lines. Despite these efforts, however, homeowner replacement of lead service lines remains limited. Of the 14,260 lead service lines WASA replaced through the first quarter of fiscal year 2008, there were only 2,128 instances in which the homeowner participated in private side replacement. Many questions remain about the benefits of partial lead service line replacement. In fact, some research to date suggests that partial service line replacement results in (1) short-term spikes in lead levels immediately after partial replacement and (2) little long-term reduction in lead levels. WASA's dilemma over this program is taking place within the context of its other staggering infrastructure needs. Most notably, WASA is undertaking a $2.2 billion effort to meet the terms of a consent order with EPA requiring the utility to control its sewer overflow problems.

WASA's challenges in addressing its lead contamination problems and other infrastructure demands are mirrored across the country, where infrastructure needs are estimated to range from $485 billion to nearly $1.2 trillion nationwide over the next 20 years. In particular, many utilities have had difficulty in raising funds to repair, replace, or upgrade aging capital assets; comply with regulatory requirements; and expand capacity to meet increased demand. For example, based on a nationwide survey of several thousand drinking water and wastewater utilities, GAO reported in 2002 that 29 percent of the drinking water utilities and 41 percent of the wastewater utilities were not generating enough revenue from user rates and other local sources to cover their full cost of service. GAO also found that about one-third of the utilities (1) deferred maintenance because of insufficient funding, (2) had 20 percent or more of their pipelines nearing the end of their useful life, and (3) lacked basic plans for managing their capital assets. Other GAO work suggests that the nation's water utilities could more effectively manage their infrastructure at a time when huge investments are needed. In 2004, for example, GAO cited "comprehensive asset management" as one approach that could help utilities better identify and manage their infrastructure needs. While by no means a panacea to their fundamental fiscal challenges, water utilities can use comprehensive asset management to minimize the total cost of designing, acquiring, operating, maintaining, replacing, and disposing of capital assets over their useful lives, while achieving desired service levels.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here to testify on the infrastructure challenges facing the District of Columbia's Water and Sewer Authority (WASA), highlighting its efforts to reduce lead exposure. In doing so, we will also put our comments in the context of the many fiscal challenges and competing demands facing all water utilities, including WASA.

Media reports in early 2004 about lead contamination of the District's drinking water raised serious concerns about the health risks posed to its residents from existing lead service lines, and about how local and federal agencies were carrying out their responsibilities. WASA's lack of timely disclosure of this problem, and the subsequent confused effort by government agencies to inform the public on steps to protect itself, led to numerous congressional hearings and a June 2004 administrative consent order between the Environmental Protection Agency (EPA) and WASA. WASA agreed to take a number of corrective actions, including improving its water sampling procedures and subsequent reporting of these results to EPA; enhancing its public education efforts; and developing a plan to identify additional lead service lines. In addition, orthophosphate was added to WASA's water supply in August 2004 to form a protective coating inside lead service lines and fixtures to prevent lead from leaching into drinking water.

To address the problem in the long-term, WASA decided to undertake what it estimates to be at least a $400 million program to replace the public portions of all its customers' lead service lines (roughly 35,000 lines) by 2016 and to also provide various incentives to encourage the replacement of lead service lines in private space. In the District of Columbia, homeowners are responsible for the portion of the service line that runs from the property line to the home. Homeowners may replace this portion of the line if they choose, but this replacement is not required.

The lead problem in the District of Columbia also prompted EPA to review the adequacy of federal regulations on lead in drinking water. In October 2007, EPA made several changes to the monitoring and public notice provisions of the Safe Drinking Water Act's Lead and Copper Rule, the principal federal regulation protecting public water system consumers from exposure to lead and copper in drinking water.

As important as the lead contamination problem has been to WASA and its customers, it is not the only issue with which the utility must grapple. Like many other large water utilities, WASA is also responsible for wastewater collection and transmission, including operation and maintenance of its wastewater treatment facility and sanitary sewer system. While the utility has sought to modernize many parts of its wastewater facilities, some components date back to the early 19th century. Like most utilities, WASA must provide for replacement or rehabilitation of its existing system, and construct extensions to this system for development and growth as needed.

The federal government has had a significant impact on the nation's drinking water and wastewater infrastructure by (1) providing financial assistance to build new facilities or upgrade existing ones and (2) establishing regulatory requirements that affect the technology, operation, and maintenance of utility infrastructure. As the agency that regulates drinking water and surface water quality, EPA provides a significant amount of financial assistance for facilities that supply drinking water and treat wastewater. This assistance is primarily in the form of grants to the states to capitalize revolving loan funds, which are used to finance improvements to drinking water and wastewater treatment facilities. In addition to its financial investment, EPA has promulgated regulations to implement the Safe Drinking Water Act and Clean Water Act, which have been key factors in shaping water systems' capital needs and management practices.

In my testimony today I will present observations on (1) WASA's efforts to address lead contamination in light of its other pressing water infrastructure needs, and (2) the extent to which WASA's challenges are indicative of those facing other water utilities across the nation.

To address these questions, we are summarizing and updating reports we issued in 2005[1] and in 2006[2] on the lead contamination problem in the District of Columbia's drinking water supplies, and on the status of WASA's effort to address this problem. We are also highlighting some of the work we have recently completed that addresses the magnitude of the nation's water infrastructure needs, the problems utilities face in addressing them, and the strategies utilities can employ to help them best meet their needs. We prepared this testimony in April 2008, based on work performed over the last three years, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary:

- The introduction of orthophosphate to its water supply has enabled WASA to consistently test below the federal action level for lead in drinking water, but the Authority is reevaluating its longer-term roughly $400 million program to replace what may be 35,000 lead service lines in public space. Importantly, this program only addresses the replacement of the public portion of customers' lead lines. Customers would need to finance replacement of their private portion of the lead lines (at a cost that could

[1]GAO, *District of Columbia's Drinking Water: Agencies Have Improved Coordination, but Key Challenges Remain in Protecting the Public from Elevated Lead Levels*, GAO-05-344 (Washington, D.C.: Mar. 31, 2005).
[2]GAO, *Drinking Water: EPA Should Strengthen Ongoing Efforts to Ensure That Consumers Are Protected from Lead Contamination*, GAO-06-148 (Washington, D.C.: Jan. 4, 2006).

reach $2,500) on their own. Yet despite WASA's efforts to encourage homeowner participation, private side replacement of lead service lines remains limited. Of the 14,260 lead service lines WASA replaced through the first quarter of fiscal year 2008, there were only 2,128 instances in which the homeowner participated in the private side replacement. Importantly, many questions remain about the benefits of partial lead service line replacement. Research suggests that short-term spikes in lead levels occur immediately after partial replacement, and little long-term reduction in lead levels may be achieved. WASA's reevaluation of this program is taking place within the context of its staggering infrastructure needs, most notably a $2.2 billion effort to meet the terms of a consent decree with EPA to address sewer overflow problems.

- WASA's difficulties in meeting myriad fiscal demands are mirrored across the country: water infrastructure needs nationwide are estimated to range from $485 billion to nearly $1.2 trillion over the next 20 years. In particular, many utilities have had difficulty raising funds to repair, replace, or upgrade aging capital assets; comply with regulatory requirements; and expand capacity to meet increased demand. For example, based on a survey of several thousand drinking water and wastewater utilities, we reported in 2002 that 29 percent of the drinking water utilities, and 41 percent of the wastewater utilities, were not generating enough revenue from user rates and other local sources to cover their full cost of service.[3] We also found that about one-third of the utilities (1) deferred maintenance because of insufficient funding, (2) had 20 percent or more of their pipelines nearing the end of their useful life, and (3) lacked basic plans for managing their capital assets. Other GAO work suggests that the nation's water utilities could more effectively manage their infrastructure at a time when huge investments are needed. In 2004, for example, we cited "comprehensive asset management" as one approach that can help utilities

better identify and manage their infrastructure needs.[4] Though by no means a panacea for their profound fiscal challenges, comprehensive asset management can help water utilities minimize the total cost of designing, acquiring, operating, maintaining, replacing, and disposing of capital assets over their life cycle, and can do so in a way that achieves the level of service customers desire.

Background

Lead contamination of drinking water is difficult and expensive to control. It seldom occurs naturally in source water supplies like rivers and lakes; therefore it cannot be treated at a centralized treatment facility. Rather, lead enters drinking water primarily from the corrosion of materials containing lead in the water distribution system and in household plumbing. These materials include lead service lines that connect a house to the water main, lead-based solder used in a house to join copper pipe, and brass faucets and other plumbing fixtures.

The Safe Drinking Water Act is the key federal law protecting public water supplies from harmful contaminants.[5] EPA's 1991 Lead and Copper Rule, promulgated pursuant to the Act, requires water systems to protect consumers against exposure to elevated levels of lead in drinking water by chemically treating water to reduce its corrosiveness and by collecting water samples from consumer taps and testing them for evidence of lead corrosion.[6] EPA considers lead to be elevated (known as the "action level") when lead levels are higher than 15 parts per billion in over 10 percent of tap water samples taken. Because lead contamination generally occurs after water leaves the treatment plant, the Lead and Copper Rule requires testing for lead at consumers' taps. If elevated lead

[3]GAO, *Water Infrastructure: Information on Financing, Capital Planning, and Privatization*, GAO-02-764 (Washington, D.C.: Aug. 16, 2002).
[4]GAO, *Water Infrastructure: Comprehensive Asset Management Has Potential to Help Utilities Better Identify Needs and Plan Future Investments*, GAO-04-461 (Washington, D.C.: Mar. 19, 2004).
[5]42 U.S.C. 300f-300j.
[6]40 C.F.R. pt. 141, subpart I.

levels are found and persist after treatment to minimize the water's corrosiveness, the water system must annually replace 7 percent of the lead service lines that it owns.

Implementation and enforcement of the Lead and Copper Rule in the District of Columbia is complicated because of the number and nature of the entities involved. The Washington Aqueduct, owned and operated by the U.S. Army Corps of Engineers, is responsible for water treatment (including corrosion control). WASA purchases water from the Washington Aqueduct and delivers it to District residents, and is responsible for monitoring tap water samples for lead. EPA Region III in Philadelphia has oversight and enforcement authority for the District's public water systems.

Similar to many of the other approximately 400 largest drinking water systems in the United States (i.e., serving populations greater than 100,000), WASA is also responsible for wastewater collection and transmission, including operation and maintenance of its wastewater treatment facility and sanitary sewer system. This water infrastructure in the District of Columbia, like in many older cities, is aging and will require substantial funding over the next several years for replacement or rehabilitation.

WASA Has Reduced Lead in Drinking Water But Faces Many Other Challenges to its Water and Wastewater Infrastructure

A June 17, 2004, administrative order for compliance on consent between EPA and WASA required WASA to take a number of corrective actions that, by necessity, enhanced its coordination with EPA and the D.C. Department of Health. Among these actions were developing a plan to identify additional lead service lines, improving the selection of sampling locations and reporting of water testing results to EPA, developing a strategy to improve WASA's public education efforts, and collaborating with the D.C. Department of Health to set priorities for

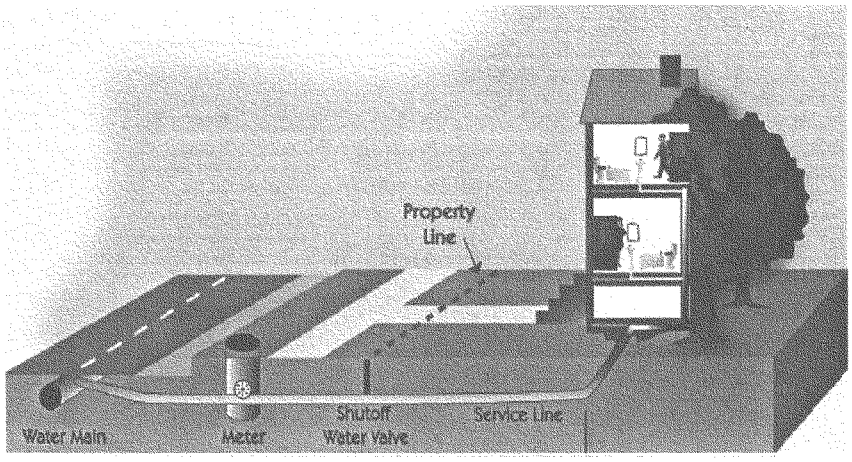
replacing lead service lines. Most importantly, with the introduction of orthophosphate to the drinking water supply, WASA met, and has continued to meet, federal standards for lead in drinking water.[7] WASA's most recent report on lead levels in D.C. drinking water was delivered to EPA in January 2008. WASA reported that 90 percent of the samples had lead levels of 11 parts per billion (ppb) or less, which is below EPA's lead action level of 15 ppb. This is the sixth monitoring period in a row that WASA has met the lead action level.

To resolve its lead problem in the long-term, however, WASA decided that it needed to undertake a program to replace the public portions of all its customers' lead service lines (roughly 35,000 lines) by 2016. WASA estimates that its program to replace all the District's lead service lines will cost at least $400 million. Importantly, this figure reflects only the cost to replace the public portion of customers' lead lines. Customers would need to finance replacement of their private portion of the lead lines (at a cost that could reach $2,500) on their own. Through the first quarter of fiscal year 2008, WASA has spent $105 million on the program, and expects to spend roughly another $300 million by 2016.

Perhaps the most important complication facing WASA's lead service line replacement program is that ownership of lead service lines in the District of Columbia is shared—WASA owns the portion from the water main to the property line, and homeowners own the portion from the property line to the home. Homeowners may pay to replace their portion of the lead service line at the same time as WASA replaces its portion, but are not required to do so. Figure 1 shows the configuration of a service line from the water main to a customer's home.

[7]Orthophosphate was introduced to the WASA's drinking water supply in August 2004 to form a protective coating inside lead service lines and fixtures to prevent lead from leaching into drinking water.

Figure 1: Lead Service Line Configuration



Source: WASA.

WASA established a program to encourage homeowners to replace their portion of lead service lines. This program included:

- a low-interest loan program for low-income residents, offered through a local bank;
- grants of up to $5,000 for low-income residents, offered by the District of Columbia Department of Housing and Community Development; and:
- a fixed-fee structure for line replacement of $100 per linear foot plus $500 to connect through the wall of the home, to make pricing easier for homeowners to understand.

Despite these incentives, D.C. homeowners have been reluctant to replace the private side of the lead service line. Through the length of WASA's lead service line replacement program, beginning in fiscal year 2003 and running through the first quarter of fiscal year 2008, of the 14,260 lead service lines replaced in public

space, only 2,128 homeowners replaced the private portion of their lead service line.[8]

These totals are particularly troublesome given the lack of information about the benefits of partial lead service line replacement. Indeed, experts disagree about the effectiveness of removing only part of a lead service line. Studies that EPA cited in the Lead and Copper Rule suggest that long-term exposure to lead from drinking water decreases when a service line is only partially replaced. However, after partial replacement of a lead service line, exposure to lead in drinking water is likely to increase in the short term because cutting or moving the pipe can dislodge lead particles and disturb any protective coating on the inside of the pipe. Some experts believe that lead exposure can increase after partial service line replacement because of galvanic corrosion where the dissimilar metals of the old and new pipes meet.

A study presented at the 2006 American Water Works Annual Conference summarizing the experience of partial lead service line replacement by the Greater Cincinnati Water Works found that partial replacements of lead lines resulted in much higher lead levels in the water for up to 1 month after replacement, even though the system was optimized for corrosion control.[9] Even after this initial period, the sites with partial replacements had similar water lead concentrations as the sites in which the entire lead line was left in place—indicating there would be little, if any, benefit of partial lead line replacement. In the study, only completely replacing the lead service line resulted in both short- and long-term water quality improvements in all of the sites tested. The authors also noted that the use of a Teflon sleeve, or some other method of treating the portion of the line remaining in service, may help to protect water quality, but that

[8]WASA has indicated of the service lines currently replaced in public space, 3,408 are also considered "full" replacements because it found that the private portion of the service line was already non-lead.
[9]Jeff Swertfeger, David J. Hartman, Cliff Shrive, Deborah H. Metz, Jack DeMarco, et al. "Water Quality Effects of Partial Lead Line Replacement." 2006 Annual American Water Works Association Conference, San Antonio, Texas.

more needs to be done in this area. Recognizing the need for more research, EPA has partnered with the American Water Works Association Research Foundation on a study of the relative contributions of service lines and plumbing fixtures to lead levels at the tap. The projected completion of the study is November 2008.

In light of these problems, WASA is now considering whether its current lead line replacement program should be restructured, particularly given its high cost and the competing demands on its budget. As a water utility serving a large metropolitan area, the lead problem has posed only one of several major infrastructure challenges for the utility and its customers. For example, approximately one-third of the District (by acreage) is served by combined sewers, which carry both sanitary waste from homes and businesses and storm water drainage. During storms this untreated sewage is discharged directly into the Anacostia and Potomac Rivers, adversely impacting the quality of these waters. To meet federal water quality standards, WASA will need to spend considerable sums of money to deal with the problem. Specifically, a March 2005 consent decree between WASA and EPA requires WASA, by 2025, to implement WASA's long-term control plan, including construction of large underground tunnels to temporarily store excess flows until they can be treated at the Blue Plains Wastewater Treatment Plant and other measures, to significantly reduce combined sever overflows into the Anacostia River and other area waterways.[10] WASA has estimated the cost of this effort to reach $2.2 billion dollars.

WASA's Water Infrastructure Problems Mirror the Challenges Water Utilities Face Nationwide

WASA's challenges are mirrored across the country, where projected needs for investment in drinking water and wastewater infrastructure range from $485 billion to nearly $1.2 trillion over 20 years. The variation in these estimates reflects alternative assumptions about the nature of existing capital stock,

replacement rates, and financing costs. EPA reported in its most recent Drinking Water Infrastructure Needs Survey (issued in June 2005) that drinking water utilities alone will need an estimated $276.8 billion for the 20-year period ending in December 2022.[11] EPA's new estimate exceeds those from prior surveys by more than 60 percent, largely as a result of an increased emphasis on capturing previously underreported needs for infrastructure rehabilitation and replacement. According to EPA's report, current needs increased by about 50 percent, but future needs rose by over 100 percent.[12] EPA attributes the difference to a more complete assessment of the longer-term needs for addressing "aging infrastructure that is currently adequate, but will require replacement or significant rehabilitation over the next 20 years."

Pipeline rehabilitation and replacement represents a significant portion of the projected infrastructure needs for water utilities. EPA estimates that underground pipelines account for about 75 percent of the nation's existing capital investment in drinking water and wastewater infrastructure. According to the American Society of Civil Engineers, U.S. drinking water and wastewater utilities are responsible for an estimated 800,000 miles of water delivery pipelines and between 600,000 and 800,000 miles of sewer pipelines, respectively. However, several recent studies have raised concerns about the condition of the existing pipeline network. For example, in August 2002, based on a nationwide survey of large drinking water and wastewater utilities, we reported that more than one-third of the utilities had 20 percent or more of their pipelines nearing the end of their useful life. In the case of one in 10 utilities, 50 percent or more of the utility's pipelines were nearing the end of their useful life. Citing a "huge wave of aging pipe infrastructure," the American Water Works Association in 2001

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[10]WASA states that combined sewer overflows will be reduced by 96 percent overall and by 98 percent in the Anacostia River.

[11]U.S. Environmental Protection Agency, *Drinking Water Infrastructure Needs Survey and Assessment, Third Report to Congress*, EPA 816-R-05-001 (Washington, D.C.: June 2005).

[12]EPA defines current needs as projects that a system considers a high priority for near-term implementation to enable a water system to continue to deliver safe drinking water. Future needs are defined as projects that water systems do not currently need but would expect to address in

predicted a significant increase in pipe breaks and repair costs over the next 30 years—even if utilities increase their investment in pipe infrastructure several fold.[13] Other studies make similar predictions for the pipelines owned by wastewater utilities.[14]

Despite the looming problems facing utility pipelines, our nationwide survey found that pipeline rehabilitation and replacement was not occurring as desired, with over two-thirds of the utilities reporting that they have fallen short of their desired pace of rehabilitation and replacement. Specifically, we found that roughly half of the utilities actually rehabilitated or replaced one percent or less of their pipelines annually, even though an estimated 89 percent of drinking water utilities and 76 percent of wastewater utilities believed that a higher level of rehabilitation and replacement should be occurring. More generally, we found that many utilities had deferred maintenance, minor capital improvements, and/or major capital improvements due to insufficient funding. About one-third of the utilities deferred maintenance expenditures, and similar percentages of utilities deferred expenditures in the other categories. According to EPA's June 2005 Drinking Water Infrastructure Needs Survey, the largest category of need is the installation and maintenance of transmission and distribution systems—accounting for $183.6 billion, or about 66 percent of the needs projected through 2022. For wastewater systems, EPA's 2004 Clean Watersheds Needs Survey projected infrastructure-related needs for publicly-owned wastewater systems of $202.5 billion through 2024.[15]

Several factors have contributed to the nation's deteriorating water infrastructure over the years. The adequacy of the available funding, in particular, has been a

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the next 20 years as part of routine maintenance or replacement of infrastructure because of predictable events, such as capital assets reaching the end of their useful life.

[13]American Water Works Association Water Industry Technical Action Fund, *Dawn of the Replacement Era: Reinvesting in Drinking Water Infrastructure* (Denver, Colo.: May 2001).

[14]For example, see Water Environment Research Foundation, *New Pipes for Old: A Study of Recent Advances in Sewer Pipe Materials and Technology* (2000).

[15]U.S. Environmental Protection Agency, *Clean Watersheds Needs Survey 2004 Report to Congress*, (Washington, D.C.: January 2008).

key determinant of how well utility infrastructure has been maintained. However, according to our nationwide survey, a significant percentage of the utilities serving populations of 10,000 or more—29 percent of the drinking water utilities and 41 percent of the wastewater utilities—were not generating enough revenue from user charges and other local sources to cover their full cost of service. In addition, when asked about the frequency of rate increases during the period from 1992 to 2001, more than half the utilities reported raising their rates infrequently: once, twice, or not at all over the 10-year period.

Our survey also raised questions about whether utility managers have enough information about their capital assets to effectively plan their future investment needs. We found that many utilities either did not have plans for managing their assets, or had plans that may not be adequate in scope or content. Specifically, more than one-fourth of the utilities did not have plans for managing their existing capital assets. Moreover, for the utilities that did have such plans, the plans in many instances did not cover all assets or did not contain one or more key elements, such as an inventory of assets, assessment criteria, information on the assets' condition, and the planned and actual expenditures to maintain the assets.

Citing communities' funding difficulties, many have looked to the federal government for financial assistance. However, if budgetary trends over the past few years serve as any indication, federal funding will not close the gap. The key federal programs supporting water infrastructure financing include the Clean Water State Revolving Fund (CWSRF) for wastewater facilities, and the Drinking Water State Revolving Fund (DWSRF) for drinking water facilities. Under each of these programs, the federal government provides seed money to states, which the states in turn use to support revolving funds that loan money to qualifying localities within their jurisdictions for new construction and upgrades. However, the trends and overall funding levels associated with these programs, suggest that they will only have a marginal impact in closing the long-term water infrastructure funding gap. Federal appropriations for the CWSRF in particular have decreased

by nearly 50 percent during the past five years—from $1.34 billion enacted for fiscal year 2004 to $689 million enacted for fiscal year 2008. Funding for the DWSRF has remained virtually flat during the same period.

Comprehensive Asset Management Can Be an Effective Tool for Managing Infrastructure and Optimizing Investments When Resources Are Constrained

Growing infrastructure needs, combined with local pressure to keep user rates low, make it imperative that utilities manage their resources as cost effectively as possible. While hardly a "silver bullet" for the water industry's massive shortfall in infrastructure funding, comprehensive asset management is one approach that has shown promise in helping utilities better identify their needs, set priorities, and plan future investments. Basic elements of comprehensive asset management include: collecting and organizing detailed information on assets; analyzing data to set priorities and make better decisions about assets; integrating data and decision making across the organization; and linking the strategy for addressing infrastructure needs to service goals, operating budgets, and capital improvement plans. At its most basic level, asset management gives utility managers the information they need to make sound decisions about maintaining, rehabilitating, and replacing capital assets—and to make a sound case for rate increases and proposed projects to their customers and governing bodies.

Our 2004 report identified a number of asset management practices that could help water utilities better manage their infrastructure and target their investments to achieve the maximum benefit. Among other things, we found that collecting, analyzing, and sharing data across the organization helped utilities make informed decisions about which assets to purchase, optimize their maintenance practices, and determine how long to repair an asset before replacement becomes more cost-effective. Some utility managers, for example, have used risk assessments to determine how critical certain assets (such as pipelines) are to their operations, considering both the likelihood and consequences of their failure. This systematic

evaluation has helped them to target their resources accordingly, with the most critical assets receiving preventive maintenance while other, less critical assets received attention on an as needed basis.

Having better information on utility assets has not only allowed managers to identify and prioritize investment needs, but has also helped them justify periodic rate increases to their customers and governing boards to pay for needed improvements. In one case, for example, utility managers modeled information on pipe performance history and replacement costs and predicted the approximate number of pipe breaks at various levels of funding. By understanding the trade-offs between lower rates and higher numbers of pipe breaks, the governing board was able to make an informed decision about the level of service that was appropriate for its community.

Whether the problem is replacing lead service lines, as is the case for WASA, meeting new regulatory requirements, or paying the price for years of deferred maintenance, many utilities are facing huge investments to add new capital assets and replace others that are reaching the end of their useful life. Comprehensive asset management is one approach that shows real promise as a tool to help drinking water and wastewater utilities effectively target limited resources and, ultimately, ensure a sustainable water infrastructure for the future. Accordingly, our report recommended that the Environmental Protection Agency take steps to strengthen the agency's existing initiatives on asset management and ensure that relevant information is accessible to those that need it.

Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of this Subcommittee may have at this time.

Contact and Acknowledgements

For further information, please contact John B. Stephenson at (202) 512-3841. Individuals making key contributions to this testimony included Elizabeth Beardsley, Ellen Crocker, Steve Elstein, Tim Minelli, Nathan Morris, Alison O'Neill, and Lisa Turner.

(360950)

Mr. DAVIS OF ILLINOIS. Thank you very much.

I will go to Ms. Norton first.

Ms. NORTON. Thank you very much, Mr. Chairman.

I found your report from GAO, Mr. Stephenson, very helpful.

Mr. STEPHENSON. Thank you.

Ms. NORTON. It gives us some context. Above all, without saying so, you make clear we are dealing with a zero sum gain here, particularly in your discussion of new chemicals in the water versus WASA's present strategy. At the hearings we had, the question was already raised, and I could never get an answer to it, and that question was: if you can only replace the public portion of the lead pipe, is there substantial benefit?

Mr. Stephenson, I am co-sponsor with the chairman of the full committee of a bill that would require the replacement of the public portion. A couple years ago I began to wonder whether that made any sense, in light of what I know as a member of the Water Resources Subcommittee about the needs that you just described.

In your testimony you indicate that the water now tests, and you say because of orthophosphate which has been introduced, that for that reason that the water supply "has enabled WASA to consistently test below the Federal action level."

The question, it seems to me, in light of the competing water needs of this and other jurisdictions, the question for me is whether it makes financial or health sense for large sums of money to go to replacing only the public portion, without any assurance that the private portion would be replaced. Let me ask you whether it would make sense if the homeowner said, here's my money for the private portion, as well, I still would ask whether that is the best place to put the money—you know what the long-term problems of WASA and combined sewer overflow are—in light of the health effects or benefits of relying only on orthophosphate to do the job?

Mr. STEPHENSON. It is a multi-part answer, I guess. The only thing that has changed really is the orthophosphate, and it takes several months to years for that to become effective, and so that is why I attribute the success in meeting lead level standards to that.

Ms. NORTON. Could I just pause and ask you: have the effects been shown? You are certainly not the first and certainly not the only to use this particular chemical. Have beneficial effects been shown more definitively in other water supplies?

Mr. STEPHENSON. Yes. It has been shown definitively in many public water supplies around the country. By the same token, research suggests that partial lead line replacement offers very little benefit, if no benefit, to the objective of getting lead out of the drinking water. It is obviously the ultimate solution to——

Ms. NORTON. And that is in part, is it not, Mr. Stephenson, because not only do you leave part of it with the lead still flowing into the household, but, in order to do the work of cutting the pipes, you disturb even more lead, which may stir up lead that might not have flowed from the public section in at all if you would just let it be and rely on the chemical?

Mr. STEPHENSON. Right. There are generally spikes in the lead levels right after you perform the replacement. So I would suggest that it has to be carefully evaluated in light of all of the other fiscal

needs that a big water company like WASA faces. They get precious little money from the revolving funds from either the Clean Water Act or the Safe Drinking Water Act. The needs are great and the Federal funding that follows that is not very great.

Ms. NORTON. Well, suppose the private homeowner said, I want mine replaced. Does that justify the public expense, in your judgment?

Mr. STEPHENSON. We think that is still the best solution, and that does make sense.

Ms. NORTON. That is the best solution even if it stirs up lead to have the public and the private replacement?

Mr. STEPHENSON. In the long run, yes, it is better to get rid of the lead service lines, but it is a very expensive undertaking, $300 million.

Ms. NORTON. So it may fail a cost/benefit test, but it may be that if you were doing the Cadillac approach that is what you would do?

Mr. STEPHENSON. Exactly.

Ms. NORTON. You have looked at the needs of WASA. Pretty staggering. I have described my attempts to get money, and we get a little bit of money, but you see it is a little bit of money every year that we have gotten. We haven't gotten hundreds of millions of dollars at one traunch that other jurisdictions have, and I must tell you that while we are on pay-go I can't promise that we are going to do that, whatever the Federal involvement in this particular water system is.

By the way, anyone that goes to the White House and into Federal buildings, I guess they are all drinking bottled water—watch out for those bottles—in order to assure their health, but, of course, there are many in the region who rely upon the water. I have news for Members of Congress and people who go to restaurants and the White House: some of that water gets into your food. They are not taking water out of the bottles and cooking with it. Of course, we know it has its greatest affect on children and babies and pregnant women.

But let me ask you, having looked at the many needs, pretty Herculean needs of the supply here and WASA, how would you categorize, how would you prioritize if you were king for a day where you would start, since you have already testified you wouldn't start here, because you don't see the cost/benefit.

Mr. STEPHENSON. We haven't done a detailed study of WASA, per se. My experience is more with facilities like WASA around the Nation. But you would have to weigh the merits of each and every expenditure. WASA, itself, is estimating $3.1 billion in capital improvement programs over the next 10 years, I believe. That is $310 million a year. So how do you allocate that? They have huge expenses associated with the Blue Plains facility to reduce nitrogen. They have the combined sewer overflow program, which is estimated at $2.2 billion over the next two decades, let alone just normal replacement of pipes.

Ms. NORTON. The reason I am indicating that there is no need here, I am doing what Congress does and saying, you know, either we are going to give you money for this or we are not. In light of what you just said, that those are the needs that you described, is there any other alternative for those needs? At least we have the

chemical alternative here. For the needs you have just described, providing sewer overflow and the rest, is there a substitute that we could rely on for those needs, even as you have testified the chemical has been definitively shown to be effective in other jurisdictions, even as there may be a substitute for requiring change in the public portion of the lead pipe?

Mr. STEPHENSON. Again, we haven't studied that specifically, but for the combined sewer overflow, for example, I mean, you need huge capital expenditures to be able to build the facilities that you would need to handle combined sewer overflow in a wet weather event. So the alternative is to pollute the Anacostia River, if you don't address that.

Ms. NORTON. So essentially you are testifying there really isn't any other way to deal with combined sewer overflow, for example, or with the long-term control plan other than to deal with it. There is no substitute here or anywhere else. We are just spending the money there where there may be, may be a substitute for spending the money on the lead pipe, particularly when the private portion is left intact.

Mr. STEPHENSON. That is true. The only question is where the money will come from.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

Mr. Sarbanes, any questions?

Mr. SARBANES. Not at this time.

Mr. DAVIS OF ILLINOIS. Mr. Van Hollen.

Mr. VAN HOLLEN. No, Mr. Chairman. Thank you for the report though. I think it raises some important questions.

Mr. DAVIS OF ILLINOIS. Mr. Cummings.

Mr. CUMMINGS. I don't really have any questions, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Let me just ask one. I was struck by the amount of money that you expressed a need for. How do you see this in relationship to the needs of water systems across the country?

Mr. STEPHENSON. It is very similar. As I said, the total estimates that aren't GAO's but are prepared by the Environmental Protection Agency and many of the water industry associations who do this for a living, are in hundreds of billions to a trillion dollars over the next several years. Obviously, the Federal Government isn't going to pay for all of that. The ratepayer has to pay for some of that. But there needs to be a balance.

WASA, itself, estimates that about 45 percent of their capital improvement is to respond to Federal requirements.

Mr. DAVIS OF ILLINOIS. So any way you cut it, we are going to need a lot of money?

Mr. STEPHENSON. Yes.

Mr. DAVIS OF ILLINOIS. Well, thank you very much. We appreciate your being here.

Mr. STEPHENSON. You are welcome.

Mr. DAVIS OF ILLINOIS. We will proceed to panel two, our second panel. While they are being set up let me just introduce them.

Robin Martin is the current Chair of the D.C. Water and Sewer Authority's Board of Directors representing the District of Columbia, and Mr. Martin has served in this capacity since May 2, 2007.

Mr. Jerry Johnson is the general manager of the District of Columbia's Water and Sewer Authority. As the first general manager of WASA, Mr. Johnson has guided the unrated agency with a projected $8 million deficit to an organization with an A-plus credit rating and $170 million reserve, all within a 2-year period.

Gentlemen, would you join us. While you are doing that, why don't I just go ahead and swear you in.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

Gentlemen, we thank you very much for being here. Of course, we try to do this in 5-minute spurts. If you would summarize your statement in 5 minutes, the entire statement is in the record.

We will begin with you, Mr. Martin.

STATEMENTS OF ROBIN B. MARTIN, CHAIRMAN, BOARD OF DIRECTORS, D.C. WATER AND SEWER AUTHORITY; AND JERRY JOHNSON, GENERAL MANAGER, D.C. WATER AND SEWER AUTHORITY

STATEMENT OF ROBIN B. MARTIN

Mr. MARTIN. Thank you, Chairman Davis and members of the subcommittee, for this opportunity to testify.

My name is Robin Martin. I am a private citizen, a resident of the District of Columbia, and I have honored to have been appointed by Mayor Adrian M. Fenty to be the chairman of the Board of Directors of the District of Columbia Water and Sewer Authority.

D.C. WASA was created in a compromise requiring foresight and leadership. I will share briefly my views about our opportunities and challenges.

The Board of Directors is working very hard with management to build on past successes. One key objective is to allow the average citizen to turn on the tap and drink the water with confidence. I am pleased to report to this subcommittee that our water is safe to drink.

Distributing drinking water is a critically important mission, having been the subject of hearings before this subcommittee. To strengthen the oversight of this critical mission area, I recently appointed Dr. Joseph Cotruvo to Chair the ad hoc Committee on D.C. Drinking Water Quality. His experience will prove invaluable.

We must continue to maintain our distribution system and to strengthen our relationship with the U.S. Army Corps of Engineers' Washington Aqueduct, which provides drinking water treatment services. Most of our consumers and many policymakers are unaware of the bifurcation in the District's drinking water treatment and delivery system.

The most controversial problem in D.C. WASA's history was a drinking water quality issue, the exceedance of the Lead and Copper Rule lead action level. The Board's lead service replacement program grew out of these issues in 2004.

These experiences provided lessons which the Board and management have taken very seriously. Among the most prominent is the importance of transparency. As the D.C. WASA Board began to

explore publicly the merits of potentially modifying the ongoing lead service replacement program last year, we have once again been subjected to criticism from certain advocates and to some negative media coverage, as well.

However, there is ongoing dialog with the public about a path forward, and for some stakeholders the issue remains D.C. WASA's credibility, but for most it is reaching an understanding of what constitutes safe water and ensuring its delivery.

We have an obligation and an interest in protecting the environment, particularly the Anacostia and Potomac Rivers, Rock Creek, and the Chesapeake Bay. We are proud to be in the forefront of these efforts.

D.C. WASA is investing enormous sums to restore and preserve waterways. While I have confidence in management, it is the Board's responsibility to ensure that these large projects—over $2 billion for the long-term control plan and nearly $1 billion for the Chesapeake Bay nitrogen removal program—are well-planned, executed, and financed.

We must also provide strategic guidance to management in its negotiations with the Environmental Protection Agency to ensure that these programs are technically achievable and affordable for all our customers.

Congress and the administration have been strong partners in these efforts, providing, for example, in excess of $100 million in funding for the long-term control plan. We want to continue this partnership, which is critical to our success.

In 2007, the District Council charged D.C. WASA with engaging an independent consultant to review the budget to find ways to contain rising retail rates and to review capital improvement plan disbursements and the financial plan. The Board enthusiastically supported this review, and the report found that D.C. WASA compares favorably in a variety of categories when benchmarked against other utilities.

The independent review of the budget is one step along a long path we are taking to try to ensure that our development, planning, and execution of operations and the capital program are as effective and efficient as possible. We recently learned that Standard & Poor's has awarded D.C. WASA an unsolicited bond rating upgrade. In this difficult financial environment, I regard the upgrade as an endorsement not only of D.C. WASA's performance, but of its governing board and management. Nevertheless, the Board has the responsibility to ensure the continuing financial health of D.C. WASA to enable it to maintain, rebuild, and upgrade the aging infrastructure so vital to the provision of our services.

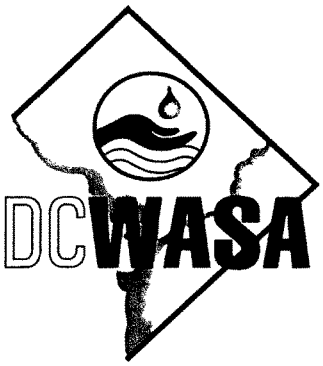
The Board is also committed to maintaining fairness and equity in our retail rate structure. For example, we are now developing an impervious surface area rate to allocate more equitably the cost of the long-term control plan to the users who actually produce the stormwater runoff that contributes to the combined sewage overflows.

D.C. WASA has earned a positive reputation in the industry for its financial management, administrative prowess, research, capital program planning, development, and project management and exe-

cution. We still face major challenges, but we have a solid foundation on which to build.

Thank you, Mr. Chairman and Members, for this opportunity to address the subcommittee. I would be happy to respond to any questions.

[The prepared statement of Mr. Martin follows:]



Testimony of Robin B. Martin
Chairman of the Board of Directors
District of Columbia Water and Sewer Authority

Before the U.S. House of Representatives Subcommittee on Federal Workforce, Postal Service, and the District of Columbia of the Committee on Oversight and Government
Danny K. Davis, Chairman

Tuesday, April 15, 2008

Thank you, Chairman Davis.

I am also pleased to be here with my colleagues on the DCWASA Board of Directors, including Dan Tangherlini, the City Administrator for the District of Columbia, Timothy Firestine and Jacqueline Brown, the Chief Administrative Officers of Montgomery and Prince George's Counties, and Anthony Griffin, the County Executive of Fairfax County.

DCWASA was created out of remarkable compromise requiring extraordinary foresight and leadership. The General Manager is prepared to provide a comprehensive overview of the organization, so I appreciate the opportunity to share briefly my views about the opportunities and challenges facing this agency.

The Board of Directors is working very hard with management to build on past successes. Among our chief objectives is working to give the average consumer of drinking water in this community, including those people who work in this complex, the comfort to turn on the tap and drink the water with confidence.

Distributing drinking water is only a part of our mission, but it is critically important, having been the subject of hearings before this very committee just a few years ago.

The Board continues to strengthen its oversight of this critical mission area. Most recently, for example, I appointed Dr. Joseph Cotruvo to chair the Board's *ad hoc* Committee on DC Drinking Water Quality. His extremely broad and deep experience will prove invaluable to the Board and to management as we continue to evaluate and enhance our effectiveness in this important mission area.

We must continue to maintain our distribution system which includes over a thousand miles of pipes in public space, tens of thousands of valves, many pumping stations, storage and other facilities.

We have a continuing interest in strengthening our relationship with the US Army Corps of Engineers Washington Aqueduct. The Aqueduct provides drinking water treatment services. This is a critically important relationship, and most of our consumers and many policymakers are unaware of the bifurcation in the District's drinking water treatment and delivery system.

The most controversial problem in DCWASA's short history was a drinking water quality issue – the exceedance of the Lead and Copper Rule lead action level. The Board's Lead Service Replacement (LSR) Program to replace all public lead services by 2016 grew directly out of the lead issues the District faced in 2003-2004, and in which this Committee took a very direct interest.

The experiences in 2004 provided a series of lessons for DCWASA which the Board and management have taken to heart. Among the most prominent was the importance of transparency. Information from the point of view of a consumer is power and it must be openly and widely shared.

As the DCWASA Board began to explore publicly the merits of potentially modifying the ongoing Lead Service Replacement Program last year, we have once again been subjected to severe criticism from certain advocates and to some negative media coverage as well.

The planned effort by management to reach out to the community on this matter has not been comfortable, but it has been a success. There is an ongoing dialogue with the public about a path forward, and while for some stakeholders the issue remains DCWASA's credibility, for most it is reaching an understanding of what constitutes safe water and implementing policies ensuring the delivery of a safe water product.

Environmental Stewardship

Environmental stewardship is, of course, everyone's responsibility. We at DCWASA, however, have a unique obligation and interest in protecting the environment, particularly our historic waterways like the Anacostia and Potomac rivers, Rock Creek and the Chesapeake Bay.

Our commitment is not rhetorical; it is tangible and measurable, and we are proud to be in the forefront of efforts around the region.

DCWASA is investing an enormous amount of capital to restore and preserve area waterways, and the Board oversees the development of the most cost-effective initiatives to achieve these laudable goals.

I have confidence in management, but it is the Board's responsibility to ensure that these large projects, over $2 billion in the case of the Long Term Control Plan and nearly $1 billion in the case of the Chesapeake Bay nitrogen removal program, are well planned, executed and financed.

I also regard it as our responsibility to provide strategic guidance to management in its negotiations with the Environmental Protection Agency to ensure that these programs are technically achievable and affordable.

I am also pleased to report to you that we have already had measurable success in working with environmental community to ensure our future success. Last year and on a continuing basis we have worked with our sometime adversaries to support champions in Congress who are working to help fund these important programs.

Strategic Planning

One of the principal responsibilities we have is to ensure that DCWASA is planning for the future. We are now completing a rigorous process of evaluating and updating DCWASA's existing 5-year Strategic Plan.

Ultimately, we will define a series of initiatives and ongoing activities that are critical areas for success, such as environmental stewardship, customer service and system reliability. For each area we will commit to concrete and measurable markers of success.

These "success factors" will drive departmental and even individual performance work plans. The associated outcomes will allow us to measure achievement and whether we are succeeding in our goal of becoming a utility that performs at the top of its class across the board.

Independent Budget Review and Rating Agency Upgrade

Mr. Chairman, in 2007 DCWASA was charged by the District of Columbia Council to engage an independent consultant to review the budget to study ways to contain rising retail rates, and to review capital improvement plan disbursements and the financial plan.

The Board of Directors enthusiastically supported the idea of an outside review and the final report provides some important findings and conclusions.

DCWASA compares very favorably in a variety of categories when benchmarked against other utilities. For example, DCWASA management practices in some areas are already among best in class. The report also includes recommendations for areas of improvement.

The report found that DCWASA is better than average on the affordability index using median household income as a guide compared to more than 20 other large utilities, while recognizing challenges to those in need.

The independent review of the budget is one step along a long path we are taking to try to ensure that our development, planning and execution of operations and the capital program are as effective and efficient as possible.

Just as the report was being completed, we learned that Standard and Poor's had awarded DCWASA an unsolicited bond rating upgrade.

In this market environment I regard the upgrade as an endorsement not only of DCWASA's performance, but of the market's high level of confidence in its governing Board and its management.

Utilities around the nation are confronting a trillion dollars in infrastructure costs; states and municipalities are facing large revenue shortfalls; and other debt issuers are confronting serious challenges, but DCWASA continues to earn the confidence of bottom-line oriented rating agencies and bond holders.

Nevertheless, each Member of the Board of Directors has a responsibility to ensure the continuing financial health of DCWASA. We must provide adequate resources for the daily operations upon which customers throughout our service area rely, as well as for the major investments in environmental stewardship.

The DCWASA Board is encouraging management to be innovative in meeting our obligation to address increasingly stringent environmental mandates, but these costs are becoming ever more burdensome to lower-income residents.

So far, Congress and the administration have been very strong partners in these efforts, providing in excess of $100 million in funding, for example for the CSO Long Term Control Plan, and we want to continue this partnership which is critical to our success.

Federal government agencies are an important group of customers, and the Board is committed to maintaining fairness and equity in our retail rate structure for all of our customers.

For example, we are now engaged in an intensive effort to develop an "impervious surface area" rate that will more equitably allocate the cost of the CSO Long Term Control Plan among our ratepayers. Although this proposed change will be revenue neutral, it will allocate more of the cost of the Plan to the users who actually produce more of the stormwater run-off that contributes to combined sewer overflows.

DCWASA has earned a well-deserved reputation among industry insiders for its financial management, administrative prowess, research, capital program planning, development and project management and execution. Like other utilities, we face major challenges, but we have a solid foundation upon which to build for the future.

Again, thank you, Mr. Chairman, for this opportunity to address the Committee. I would be happy to respond to any questions.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Martin.

We will proceed to Mr. Johnson.

STATEMENT OF JERRY JOHNSON

Mr. JOHNSON. Thank you, and good afternoon, Chairman Davis and members of the committee. I am Jerry Johnson, general manager of the District of Columbia Water and Sewer Authority. I appreciate the committee's interest in receiving an overview and update on D.C. WASA.

I would like to start by briefly noting a few recent positive developments.

On March 13th I had the pleasure of submitting to the D.C. WASA Board of Directors the 11th consecutive unqualified audit opinion for the year ending September 30, 2007. A clean audit is nothing less than our stakeholders deserve, and we should be providing it as they expect it.

With respect to the bottom line, fiscal year 2007 ended with revenues exceeding expenditures by approximately $23 million, and with cash reserves in excess of the board's required 180-day operating and maintenance cost of $111 million. Those excess funds were used for pay-go and for rate stabilization fund.

Mr. Martin mentioned the unsolicited bond upgrade, but I would like to point out that a portion of our outstanding debt issuance has included bonds known as auction rate securities. As you may know, under the current credit market conditions, these securities have experienced volatile interest swings. We took actions to refund the outstanding auction fund debt, eliminating the risk of our overall operating costs. The largest portion of this refunding, $310 million, has been successfully offered in the marketplace and will close at the end of this month at a fixed rate of 4.89 percent, which is about outstanding, given the circumstance that many jurisdictions face in not being able to get rid of those types of securities.

Mr. Chairman, in 2007 the District of Columbia Council budget legislation included a provision directing the Board of Directors to engage with an independent consultant to review the budget and certain aspects of the capital program. The Board commissioned the review even before the law was enacted. The report offered several recommendations, including, for example, continuing our effort to build internal staff capacity to manage and utilize costly commodities like electricity and chemicals.

Overall, the consultant stated, "D.C. WASA is a high-performing water and sewer utility with good management practices which are, in some cases, best in class, and one of the best-kept secrets on the east coast."

By way of background, WASUA, D.C. WASA's predecessor agency, operated as an enterprise fund, and revenues from that were segregated from the local government's general fund. As you may recall, in the late 1980's and 1990's the District of Columbia experienced significant financial challenges, and the District made use of approximately $85 million of WASUA enterprise funds for pay-go government expenses. It is important to note that these funds have since been repaid, but at a time the District-wide hiring freeze, long deferred maintenance, capital improvements, the water distribution system and wastewater collection system, and treatment

systems, and a 10-year hiatus in adjusting the rates to collect revenues needed to operate and upgrade the system alternative came together in a giant crash.

The demand for prudent utility operations prompted in 1996 the District of Columbia, the participants in the Blue Plains service area, and the U.S. Congress to agree to create the District of Columbia Water and Sewer Authority, an independent agency of the District of Columbia.

Many policymakers took part in the negotiations, but Congresswoman Eleanor Holmes Norton's leadership in that effort was critical in building the foundation for the organization's success that exists today.

In celebrating our 10th anniversary, I noted that I believed that a model for regional cooperation was created, and it stands today for others to emulate.

D.C. WASA's enabling legislation also provided that the agency would have procurement, personnel system that were separated from the District, along with independent authority to establish policy in those areas. The enabling statute also granted D.C. WASA's board the authority to issue debt. Since 1996, D.C. WASA's board of directors has been solely accountable for the hiring of financial management staffs, setting financial policies, developing and adopting the organization's financial plans and practices, setting fees and charges, adopting annual operating and capital budget, the 10-year capital and financial plan, as well as setting rates.

As one of the larger utilities in the United States, D.C. WASA has two critical missions: those of purchasing drinking water from our partner agency, the U.S. Corps of Engineers, and distributing it to 130,000 or so customers in the District of Columbia; and also for collecting and treating sanitary flow that is discharged into the Potomac River, and for producing about 4,400 tons of bio-solids per month for the land applied in the Commonwealth of Virginia.

D.C. WASA is one of the strongest environmental stewards in the region, investing hundreds of millions of dollars in improving water quality in the Anacostia, Potomac, and the Chesapeake Bay. We are in compliance with all MPDES permit requirements. We are also in compliance with the Safe Drinking Water Act and all standards pertaining thereto,.

With respect to capital improvements, WASA is responsible for the operation of utility plant assets in excess of $2.2 billion. For example, the Blue Plains Wastewater Treatment Plant, perhaps the largest in the world, streaming capacity of 370 million gallons a day. We are very proud of the national reputation that we have achieved there.

But we are also responsible for thousands of miles of underground infrastructure, as was mentioned by the representative from GAO, with a number of hydrants, valves, and other larger facilities.

Since D.C. WASA was created in 1996, we have invested over $1 billion in capital improvements. Through 2016, D.C. WASA plans to spend an additional $3.1 billion in capital assets. This substantial increase as compared to last year's investment of $2.2 billion

for the capital improvement program is mandated by the U.S. EPA as benefiting the Chesapeake Bay.

Specifically, roughly $900 million of increase is almost driven entirely by the Blue Plains total nitrogen project. This investment is required to meet the new Federal nitrogen limits imposed for the discharge at the Blue Plains Wastewater Treatment Plant. We estimate that fully 45 percent of the CIP that is currently in place is required by regulatory mandates.

There are a number of other projects that are listed in the testimony that you have received, so I will not go into all of those, but we have made a commitment of $636 million over the next 10 years to maintain and enhance the water quality throughout the capital and improve operations in our water distribution system, and another $150 million going to the Washington Aqueduct for projects that will be undertaken there.

We have also undertaken a comprehensive sewer assessment program in the District that spanned about 5 years that will result in major capital projects that we will have to undertake.

I would be remiss if I did not note and express our appreciation for the Federal funding support that we have received since 2003. We have received about $106 million in Federal support of the $2.2 billion long-term control program to reduce combined sewage overflows into the Anacostia, Potomac Rivers, and Rock Creek. We have matched this extraordinary level of funding with 100 percent of local funds, principally from District ratepayer.

Ms. Norton, you have been a leader, and it is once again that you have provided that extraordinary leadership in helping to obtain these funds, and we are truly gratified that you and other Members of Congress from around the region, like Congressman Van Hollen, have joined in seeking additional support under WRDA and additional resources to support the massive capital programs. With congressional support, we have already eliminated 33 percent of CSOs. By the end of 2008 we will have reduced it by 40 percent.

The continuing challenge is that it will require nearly a decade and a half and an additional $2 billion to complete the project, and continuing Federal commitment is critically important for the District of Columbia.

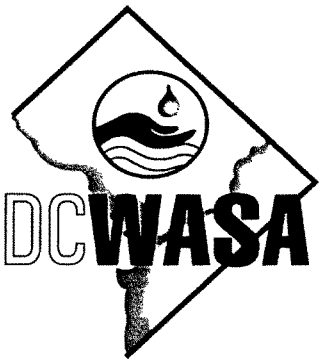
Building on industry leading automated systems and technology, we have begun installing a high-tech system that allows us to notify our customers when there are problems with the water bills, and we are able to do that in advance.

I would also like to salute the Board's leadership that has resulted in a focused and long-term commitment to improving operational efficiency, which is important to our customers as we continue to rebuild aging infrastructure.

Mr. Chairman and Members, D.C. WASA has evolved from a troubled beginning to become a respected and responsible forward-looking utility poised to successfully meet the challenges of the future. We have moved from crisis to stabilization to stability.

Thank you for giving me this opportunity to give the committee an overview of D.C. WASA and its operations. I will be happy to respond to any questions you or members of the committee may have.

[The prepared statement of Mr. Johnson follows:]



Testimony of Jerry N. Johnson, General Manager
District of Columbia Water and Sewer Authority

Before the U.S. House of Representatives Subcommittee on Federal Workforce, Postal Service, and the District of Columbia of the Committee on Oversight and Government
Danny K. Davis, Chairman

Tuesday, April 15, 2008

Good afternoon, Chairman Davis, and members of the Committee. I am Jerry N. Johnson, General Manager of the District of Columbia Water and Sewer Authority. I appreciate the Committee's interest in receiving an overview and an update on DCWASA.

I would briefly like to note very recent and positive developments:

Clean Audit

On March 13, I had the pleasure of submitting to the DCWASA Board of Directors, the 11th consecutive unqualified audit opinion for the year ending September 30, 2007. A clean audit is nothing less than all our stakeholders should expect. Our Board of Directors, our finance and budget staff and our senior managers, however, work very hard to make sure we routinely meet that expectation.

With respect to the bottom line, FY 2007 ended with revenues exceeding expenses by approximately $23 million and with cash reserves in excess of the Board-required 180-day operating and maintenance costs of $111 million.

Bond Rating Upgrade

I am also pleased to tell you that on April 4, Standard and Poor's, one of three principal credit rating agencies, upgraded DCWASA's credit rating from AA- to AA, a status which few utilities achieve. As late as June 2007, DCWASA issued subordinated lien public utility revenue bonds with gross proceeds of $293.4 million. DCWASA's long-term debt, including current maturities is now $1.1 billion. Our customers will clearly benefit from this unsolicited upgrade because it means that the cost of borrowing to finance our massive capital program will have a lower debt service cost.

We are extremely proud of this unsolicited and independent recognition that our Board and management team have implemented policies and demonstrated financial management practices that are sound.

Auction Rate Securities

DCWASA is constantly watching the financial markets to ensure that the most effective and beneficial investments and financing mechanisms are in place. A portion of our outstanding debt issuance has included bonds known as "auction rate securities". As you know, under current credit market conditions, these securities have experienced volatile interest swings adversely affecting some municipalities, public agencies and other institutions. DCWASA recognized the economic indicators early. We took action to refund the outstanding auction rate debt, eliminating the risk to our overall operating costs. The largest portion of this refunding has successfully been offered to the market and will close at the end of the month at a fixed rate of 4.89 percent.

Independent Comprehensive Budget Review

Mr. Chairman, in 2007 the District of Columbia Council budget legislation included a provision directing the DCWASA Board of Directors to engage an independent consultant to review the budget and certain aspects of the capital program, and the Board commissioned the review before the provision was enacted.

The recently completed report was undertaken by the consulting team of URS and Amawalk, and the report offered several recommendations, including, for example, continuing our effort to build internal staff capacity to manage utilization of costly commodities like electricity and chemicals – we have already made substantial progress in managing the costs through careful market analysis.

Overall, the consultants stated that, "DCWASA is a high performing water and sewer utility with good management practices which are in some cases 'best in class', and one of the best kept secrets on the east coast." Their analysis included benchmarking against other large utilities which are actively working to measure and improve their performance. DCWASA was found to be essentially equal to or better than our peers on a whole range of both measures and management practices.

History

DCWASA has had a few predecessor agencies, including having operated as the Department of Environmental Services, and later as the Water and Sewer Utility Administration within the District of Columbia Department of Public Works, or "WASUA".

WASUA was operated as an enterprise fund, and the revenues and expenditures were segregated from the local government's general fund. As you may recall, in the late 1980's and early 1990's, the District experienced significant financial challenges, and the District made use of approximately $85 million of the WASUA enterprise fund to pay general government expenses.

It is important to note that these funds have since been repaid, but at that time a District-wide hiring freeze, long-deferred maintenance and capital improvements on the water distribution system and the wastewater collection and treatment systems, and a ten-year hiatus in adjusting rates to collect the revenues needed to operate and upgrade the system were all coming together. These conditions were visible and adversely affected compliance with the federal Safe Drinking Water Act as well as the Clean Water Act. Day-to-day operations were suffering, and as a consequence so was the delivery of routine but very important customer services.

The demand for prudent utility operations prompted, in 1996, the District of Columbia, the participants in the Blue Plains service area, and the US Congress, to agree to create the District of Columbia Water and Sewer Authority, an independent agency of the District of Columbia.

Doubts about the new structure, what we now know as DCWASA, were so strong that the legislation included a provision that required a review of an alternative governance structure, even before we began operations. Many policymakers took part in the negotiations, but Congresswoman Eleanor Holmes Norton's leadership in that effort was critical in building the foundation for the organization that exists today.

DCWASA celebrated its 10th Anniversary in 2007, and I again want to thank her and many others for their work in 1996 that helped make ten years of extraordinary partnerships and progress a reality. I believe that a model for regional cooperation was created, and it stands today for others to emulate.

DCWASA is Unique

There are other independent agencies within the District government, and like them, DCWASA is subject to District laws approved by the Council signed by the Mayor which become law. We are also subject to regulations promulgated by District agencies.

DCWASA, however, is the only District agency that provides critical services to communities outside the District of Columbia, giving rise to another unique feature of this agency, a governing board that includes representatives from other jurisdictions, including Prince George's and Montgomery counties in Maryland and Fairfax County in Virginia.

DCWASA's enabling legislation also provided that the agency would have procurement and personnel systems that were separate from the District along with independent authority to establish policy in these areas. The enabling statute also granted DCWASA's Board the authority to issue debt. Since 1996, DCWASA's Board of Directors has been solely accountable for hiring financial management staff, setting financial policies, developing and adopting the organization's financial plans and practices, setting fees and charges; adopting the annual operating and capital budgets and the ten-year financial plan, as well as setting retail rates. As you may know, the Board-approved DCWASA Budget cannot be changed by the District Council, but it must be enacted by Congress (as part of the District's local budget).

DCWASA's Mission

As one of the larger water and wastewater utilities in the nation, DCWASA has two mission critical activities in serving our over 2 million customers. Specifically:

- DCWASA purchases drinking water from the US Army Corps of Engineers Washington Aqueduct, which treats water drawn from the Potomac River. DCWASA then distributes drinking water through the District's 1300 miles of water mains to approximately 130,000 separately metered retail customers in the District of Columbia. The Aqueduct and DCWASA have joint responsibility for providing drinking water, but with respect to compliance with the Safe Drinking Water Act beyond treatment, it is DCWASA which is accountable for monitoring the distribution system and drinking water compliance with the Act. I am happy to report that the District's drinking water must meet the same Safe Drinking Water Act standards that apply to other municipalities, including the provisions of the Lead and Copper Rule -- we are in compliance with these standards.

- DCWASA also collects sanitary wastewater from customers in the District through approximately 1800 miles of underground conveyance systems. We provide wastewater treatment services for these customers as well as to about 1.6 million people who reside in Montgomery and Prince George's counties in Maryland, and Fairfax and Loudon counties in Virginia. DCWASA is one of the strongest environmental stewards in the region, investing hundreds of millions in the improving water quality in the Anacostia, Potomac and the Chesapeake Bay -- we are in compliance with the NPDES Permit issued by the EPA under the national Clean Water Act.

Households and businesses in suburban jurisdictions are actually billed directly by their local wastewater treatment utilities – those local agencies, however, rely upon DCWASA for wastewater treatment services at Blue Plains. These "wholesale" wastewater treatment services are purchased from DCWASA, and they are responsible for the operating, maintenance and capital costs associated with providing these services. The costs are apportioned based principally on the terms of a negotiated service agreement, the "Intermunicipal Agreement" or "IMA", between the District of Columbia and the suburban user jurisdictions.

Capital Improvements

WASA is responsible for the operation of utility plant assets currently valued at $2.2 billion. For example, the treatment plant at Blue Plains is perhaps the largest advanced wastewater treatment plant in the world with a treatment capacity of 370 million gallons per day. We are very proud of this facility's nationally recognized and award winning performance.

But, we are also responsible for thousands of miles of existing underground infrastructure, drinking water storage facilities, pumping stations, over 9,000 hydrants and 40,000 valves, some of which are larger than a four passenger vehicle.

It is critically important that we carefully manage and prudently invest in this infrastructure over time in order to maintain services, protect the environment and manage costs.

FY 2007 - 2016 CIP

Since the DCWASA was created in FY 1996, we have invested over $1 billion in capital improvements. Through 2016, the next 10-years, DCWASA plans an additional $3.1 billion in capital investments. This substantial increase compared to last year's estimate of $2.2 billion for the Capital Improvement Program is mandated by the EPA Chesapeake Bay Program.

Specifically, this roughly $900 million increase is almost entirely driven by the cost of the Blue Plains Total Nitrogen project. This investment is required in order to meet the new federal total nitrogen discharge limit imposed on the Blue Plains Waste Water Treatment Plant in our NPDES Permit. We estimate that fully 45 percent of the CIP is required in order to meet regulatory mandates.

For FY 2009, the Capital Improvement Program disbursements budget is projected at $255.6 million, compared to $323.7 million in FY 2008.

Approximately 29 percent of the FY 2009 CIP, or $73.9 million, is for water distribution system projects.

We also expect to disburse approximately $32.6 million for the Combined Sewer Overflow Long Term Control Plan, and $31.1 million for sanitary sewer projects.

Approximately 35 percent, or $90.6 million, of the budgeted capital spending for FY 2009 will be at the Blue Plains Wastewater Treatment Plant.

Examples of Continuing Investment in Capital Improvements

Specifically, we've made a commitment of $636 million over the next ten years to maintain and enhance water quality through capital projects and improved operations in our water distribution system, and an additional $150 million in investments at the Washington Aqueduct.

Valve Exercise Program (VEP) - In the water distribution system there are approximately 40,000 valves. The valve exercise program is designed to exercise all critical valves, approximately 2,700, annually and all non-critical valves, about 38,000, every three years.

Over the next 10 years, we have budgeted over $190 million for replacement and rehabilitation of water mains, as well as for large valve replacements.

Improving Service East of the Anacostia River - We are investing substantial capital funds, in excess of $70 million, to improve water service in certain neighborhoods east of the Anacostia River. We are currently under design or construction on water main replacements, a new elevated water tank and a new pumping station.

This work will improve water pressure and service reliability for current customers, but they will also support future residential, office and commercial development.

Small Water Main Study and Fire Protection: As some of you may recall, as recently as last year, there were two major fires that raised doubts about the reliability of hydrants as well as DCWASA's stewardship of the small water mains in the distribution system. Our efforts to upgrade the District's hydrants with a $25 million capital program and to develop a joint inspection program with the Fire Department were underway before the Georgetown Library fire.

We also have invested in upgrading the water mains, a continuing priority, that supply customers and the hydrants for the last ten years, and our hydraulic models of the system and pressure sensors provide us with a high level of confidence that our water mains provide a relatively robust and redundant level of support for fire suppression.

But as I have testified before this Committee in the past, we must be accountable for our work and we must address the causes of public concerns, whenever they arise and for whatever reason:

- DCWASA quickly created a "Google Earth"/GIS application that allowed the Firefighters and the public to view in real time District hydrant status;
- DCWASA, at the Board's direction, completed a small water main study within a matter of weeks and provided the results to the Fire Department, and local policymakers. The report concluded that there was one neighborhood served by small mains that could be impacted by inadequate fire flow in an emergency. Steps were immediately taken by the Fire Department and DCWASA to address the issue.
- By the end of this month we will supply Firefighters with specially programmed handheld devices that allow them to upload inspection data almost immediately to our asset management system so that our crews can be deployed and work can be scheduled expeditiously.

I am very proud of DCWASA staff, because of the can do spirit and creativity and commitment. But I firmly believe that our enabling statute has made it possible for us to innovate, and rapidly respond to changing circumstances.

Our treatment plant operators, for example, began using an alternative chemical, and eliminated the use of 90-ton rail cars of gaseous chlorine from the wastewater treatment process within 90 days of 911.

Even the lead issues of 2004, which resulted in hearings by three Congressional Committees, and several other serious and substantive reviews and reports, resulted in a ground-breaking plan (for a large system such as ours) to eliminate lead services in public space within a few years. We are now likely the most active utility in the nation engaged in peer reviewed research on lead issues. As you know, the District's experience prompted a broad and healthy debate about the federal Lead and Copper Rule, itself.

As we speak, in an effort to address critics concerns, we are working to develop a third-party review of District drinking water – a perhaps unprecedented response from a utility that is meeting the requirements of the Safe Drinking Water Act – but a healthy response to the need to bolster public confidence.

Sewer System Assessment –A comprehensive Sewer System Assessment, the first since the 1950s, has allowed us to inspect approximately 80 percent of all high priority sewers. As we proceed with this assessment, we are able to identify specific high priority projects and develop a longer term spending plan for improvements to the sewer system.

Based on the study to date, we have programmed a substantial rehabilitation of the outfall sewers. These major sewers convey wastewater from the major pumping stations to Blue Plains, and will require an estimated $30 million in improvements. This project expenditure is associated with the Authority's consent agreement requiring that CSO facilities be operated at design specifications.

Our CIP budget includes funds for other major system improvements. For example, we will replace a 70-year-old sanitary sewer-the Upper Anacostia Main Interceptor (UAMI) Relief Sewer. The UAMI is a sewer that serves many of our customers in the Northeast quadrant of the District of Columbia. We have included in our budget $2 million for the installation of this sewer which is necessary for system reliability and to provide capacity for service growth through FY 2030.

We plan to finance these capital costs with bond proceeds, wholesale customer capital payments, federal appropriations and pay-go financing.

Federal Support for Combined Sewer Overflow Long Term Control Plan (LTCP)
I would be remiss if I did not note and express our appreciation for the federal funding support we have received since 2003. We received about $106 million in federal support for the $2 billion LTCP to reduce combined sewer overflows into the Anacostia, and Potomac rivers and Rock Creek.

We have matched this extraordinary level of support with a 100 percent local funds match, principally from District ratepayers.

Ms Norton has, once again, provided extraordinary leadership in helping to obtain these funds, and we are truly gratified that other Members of Congress from around the region, like Congressman Van Hollen, have joined with her in seeking additional support under the Water Resources Development Act -- an additional source of support for our massive capital programs.

With Congressional support, we have already eliminated an estimated 33 percent of CSOs, and by the end of FY 2008 we will have eliminated about 40 percent of CSOs. The continuing challenge is that it will require nearly two decades and an additional $2 billion to complete the project, and a continuing federal commitment is critically important to our ability to manage the cost for District ratepayers.

Impervious Surface Rate Structure

In order to more equitably allocate the costs of the CSO LTCP, the Board of Directors is considering a separate Impervious Surface Area charge as a part of the retail rate structure. Impervious surfaces are those that are not easily penetrated by water, such as rooftops, patios and parking lots. This rate proposal takes a major step in allocating costs more equitably among our ratepayers.

This proposal for a new rate structure unbundles the cost of the LTCP from the retail sewer service rate by shifting the costs of implementing the $2.2 billion LTCP from the sewer charge (which is based on the volume of water that a customer uses)" to an Impervious Surface Area Charge (IAC) based on the calculation of a customer's land area and its contribution to the surface run-off that actually produces combined sewer overflows.

Investing in Customer Service Improvements

Another major initiative undertaken is a review of DCWASA's building permit process. Construction permit requests are submitted by developers and others who need access to the water or sewer infrastructure or whose projects will impact these systems.

This process improvement had strong Board and management involvement and will leverage technology and the DCWASA web site to make information about the process easily available to clients.

We are also consolidating and moving the permitting functions to a more central office location to make them more responsive and accessible to customers. Our expectation is that these improvements will make the permit process more transparent, reduce review time, and produce measurable service improvement.

Building on the industry leading automated meter reading technology we began installing a few years ago, another DCWASA customer service investment has been the implementation of Interactive Voice Recognition (IVR), and the automated High Use Notification system (HUNA). We can now alert customers of significantly higher water usage before they receive a high water bill -- traditionally the first clue to an unknown water leak was a very large water bill.

Going forward, this technology will improve voice communication and other self-service options. Ultimately we will provide automatic notification of service interruptions and main repairs.

Research

In addition, DCWASA has been, and will continue, collaborating with a number of national research foundations and universities on wastewater and biosolids management research designed to improve or develop new processes. These collaborative projects allow us to expand research capacity and contribute to the development of the next generation of wastewater treatment engineers and environmental scientists.

- We actively disseminate cutting-edge research and process innovations at many national and international conferences.

- Through our sponsorship of the Water Environment Research Foundation (WERF), DCWASA is participating in thirteen projects, including nutrient removal, disinfection, solids process technologies, biosolids management, plant automation, and plant security.

- I currently serve on WERF's Board of Directors, and Authority staff members serve on project advisory committees addressing health, safety and management issues.

- We are working with Howard University and utilities in Maryland and Virginia on leading research on the bioavailability of organic nitrogen from wastewater effluents.

- In cooperation with the City of Toronto, Canada, we are evaluating anaerobic digestion processes to enhance digester gas formation and reduce biosolids inventory.

- WASA, in cooperation with several utilities in North America, is evaluating methods to more effectively destroy fecal coliforms from Class A and Class B anaerobic digestion. And, in cooperation with Virginia Polytechnic Institute and State University and the George Washington University, WASA conducted laboratory-scale testing of thermophillic digestion to understand methods to achieve Class A biosolids.

The Board's leadership has resulted in a focused and long-term commitment to improving operational efficiency which is so important to our customers as we continue to rebuild aging infrastructure. With the Board's leadership, we have, for example:

- achieved an AA bond rating;
- taken steps to ease the burden on District ratepayers by creating a Rate Stabilization Fund;
- worked to address the burden that necessary rate increases can place on low income residents by enhancing our Customer Assistance Programs;
- used technology to make services more accessible and responsive, and,
- launched a newly focused Authority-wide performance measurement initiative to ensure steady and measurable progress in achieving world class status.

Mr. Chairman, DCWASA has evolved from a troubled beginning to become a respected and responsible forward-looking utility poised to successfully meet future challenges.

Thank you for giving me the opportunity to give this Committee an overview of DCWASA and its operations. I will be happy to respond to any questions you may have.

Ms. NORTON [presiding]. I thank both of you, Mr. Johnson and Mr. Martin, for that important and indispensable testimony to this hearing.

Now, if I may say so, count yourself lucky and the District unfortunate that this is not a vote in the committee, as a whole, the only House vote on which I can cast a vote for the District of Columbia, so my colleagues, including the Chair, had to go to vote, and your humble Member is left here, much to her regret, with all apologies to you that she cannot do the important work of casting a vote for the residents of the District of Columbia. We are only three votes short in the Senate. That is the place where you need 60 votes. That is how you get a majority there. It is the only place that a majority is defined by more than 51 votes.

That said, the chairman, if he were here, would have asked a question that is prescient inasmuch as I would have asked it if he hadn't, and he asked how many District residents are waiting a full-pipe replacement. How many are awaiting that in the District of Columbia, full pipe? Full pipe—that must be you get some kind of guarantee that they are going to do the other or they pay you to do both at the same time? Is that how it works?

Mr. JOHNSON. Before we begin in a neighborhood to do the lead service line replacements, Ms. Norton, we will notify the residents and provide them with at least a 45-day lead time and an opportunity to replace the private portion while we are replacing the public portion.

Ms. NORTON. Sir, I am just trying to find out how that works. Do they have to do that first?

Mr. JOHNSON. No, ma'am. We will do all of the work first using our——

Ms. NORTON. So how do you know they will do it? Do they then remit an amount to you to do it and then you decide to do the private and the public all at the same time?

Mr. JOHNSON. We have several different options for approaching that. One, they can set themselves up on a payment plan with the water and sewer authority. We have also made arrangements through Wachovia Bank for a discounted rate loan that can be made to our customers, and we work with the D.C. housing——

Ms. NORTON. Thank you. I didn't hear a payment plan here, but I appreciate that detail. What I really want to know is how many residents are awaiting full-pipe replacement and decided to invest in that measure, which you heard from the previous witnesses, is the best way to remove lead from the water?

Mr. JOHNSON. Yes, ma'am. I cannot give you a going-forward number. The number to date has been somewhere around 23 percent of the total——

Ms. NORTON. That is 23 percent of what, sir?

Mr. JOHNSON. Of the total number that we have done public side replacements. It is a rolling number because we are constantly sending——

Ms. NORTON. The number I am asking for wasn't rolling at all. I am just asking how many have contacted you to say they want to do full-pipe replacement. Do you have that figure?

Mr. JOHNSON. To date it has been about 22 percent of the 14,200 and some that we have done.

Ms. NORTON. So of those that have already been done, 14 percent of the replacements, the others have been public-side replacement only?

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. You heard my questions to the GAO, pretty definitive, that replacement on one side may do more harm than good, but that replacement of both is the top of the mark, the gold standard. Do you have consultants that indicate to you that partial replacement, in light of the alternative, is not the best option for WASA?

Mr. JOHNSON. I believe, Ms. Norton, that any lead that is removed certainly has some benefit, but in a case where you only replace a part of the lead service line and you still have quite a bit remaining——

Ms. NORTON. Have you a consultant that says if you do only—there will be others after you. Perhaps they can testify to this, too. You say any removal. Well, the testimony before you was that it was a no statistically significant effect.

Mr. JOHNSON. That is correct.

Ms. NORTON. I hate to ask these questions in this way. Remember, I am the one who cosponsored a bill to say do the whole thing, and if you can't get the private sector to do it, go do it anyway, public sector. But I also am contending with your competing priorities, and I can tell you this without fear of being contradicted: every single bill that goes to the House of Representatives is a pay-go bill, and it is going to be that way for eternity because of the huge increase in the deficit that we have built up in the last 8 years with the war and with tax cuts for wealthy people, so we are left in this zero sum gain notion of what are the priorities.

If you had to answer the same question that I gave to the GAO, ranking, what would be the most important place to put money to have the greatest health affect and the greatest effect on the region? What would be first for you or, for that matter, for the Board, Mr. Martin?

Mr. MARTIN. Let me try to answer that question. I think one of the things that we are attempting to answer is the question of whether, if there are no replacements whatsoever, public side or private side, if orthophosphate is sufficient to provide clean drinking water, and the tests that we have so far show that we are below the lead action level. So that would seem to appear to us that, in fact, would be the case.

Ms. NORTON. Well, more important than that, the GAO said it has been definitively shown in other jurisdictions, which use orthophosphate for a far longer time than we have.

Mr. MARTIN. Right.

Ms. NORTON. Again, you know, this is what is going to happen in the Congress. You can't get a bill through here for the gold standard, so the first thing one has to do—I have already spoken to the chairman about this, and he said he would get the Chair to look at it, because he has been the standard bearer of this, and I joined him enthusiastically, and have not been convinced yet that we should change the bill. But I must say that the more the evidence rolls in—I continue to be an academic, teach one course every year, as I did before I came to Congress, and it is very hard

for me, in the face of evidence that there is a cheaper way to do it, to say keep replacing the public portion. I have a problem with that.

This is a free society. You can't make somebody change the private portion. One could, of course, say you must change them when the other side, the private side, says, I want them changed. Of course, still the money is coming from the taxpayers, so it is still not a free lunch. If they wanted to say, OK, I will pay for changing the public and the private, that is another story.

For myself, I want to say right here, you know, the pipes that most interest me are the pipes that we found during the controversy in D.C. public schools. Those are pipes I am interested in, and those are pipes which you go to the fountain and there was a concern about lead. We dealt with that in part through other means. Can you assure me that when you turn on the water fountain in every D.C. public school and every part of the region that may be served, that you will not get out of those pipes from that water fountain lead-contaminated water?

Mr. MARTIN. Ms. Norton, I think one of the issues is that even if the public side and the private side of the lead service line are replaced, there are still fixtures within a home, within a building, within a school that may contain lead fixtures. So the issue that——

Ms. NORTON. And you think that might be the case in public schools?

Mr. MARTIN. It very well could. Yes.

Ms. NORTON. This is what Democrats got accused of, spending money no matter what the effect. We refute that more often than not, but I am looking here for the evidence, the facts. As they say, nothing but the facts.

My major concern, when you get to be as old as most of the people in the room, the fact is the evidence is that lead has less and less affect, and the great and horrific concern in the District was with pregnant women and with children of school age, and most particularly elementary school age, but yes, all children who are still in formation of their brains and other body structures.

In 2008 there was tap water that appeared to implicate as the source of lead as a problem for 15 percent of children in the District of Columbia who had elevated lead, blood lead levels, whose water was actually tested for lead. Yet, you both have claimed that the District's water is safe to drink. How can we accept that testimony in light of these tests that were dong?

Mr. JOHNSON. I can't say that I am familiar with those tests and how they were conducted.

Ms. NORTON. It was from the D.C. Department of Environment reports. It is a report from the District of Columbia Department of Environment, 2007–2008, which reported that tap water was, indeed, implicated as a source, apparently not the only source, as a source of lead for 15 percent of D.C. children. I will have to ask them the extent to which the report showed that lead in the water, but apparently it did show that lead in the water was a source for these children, for 15 percent of these children whose drinking water had actually been tested for lead.

Mr. JOHNSON. Ms. Norton, I am not a health expert and I don't think that I would——

Ms. NORTON. But you did tell me that the District's public water was safe to drink.

Mr. JOHNSON. And I will stand behind that statement and will certainly——

Ms. NORTON. I am going to make available to you this report.

Mr. JOHNSON. OK.

Ms. NORTON. I can't believe that somebody in WASA hasn't seen it or at the Aqueduct, and I am going to ask you in 30 days to comment on the question I just asked about this 15 percent of the children who were actually tested. And I am the first to understand the lead may have come from multiple sources. I had a discussion with someone recently who told me that they were winning lead cases in court.

I said, how can you be winning lead cases brought by children? This young man was one of my students when I was a full-time professor of law at Georgetown and he's very much about my politics. He works for a big law firm now. He said, because of cause and effect, the source problem becomes a very big problem, given the children who have lead and the varied sources of contamination.

I am very evidence-oriented. I questioned him, I cross-examined him. He said they were winning cases in Mississippi. I don't know if you know the storied Mississippi juries which sit in order to award money to deep pockets.

Anyway, I asked this question not because I preclude an answer one way or the other, but because this report was done, and we will make available to you the report.

Many of us saw the outcry about the lead in the water, Lead and Copper Rule compliance, but because they did not include measurements that were taken in between late May and early July in 2006 and 2007. Because you are trying to regain the public trust, I wonder why those months would have been excluded rather than simply explained perhaps?

Mr. JOHNSON. That is simply not the case, Ms. Norton. I think that we have documentation of the time of year——

Ms. NORTON. You took measurements between late May and early July? Did you make them public?

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. This is a period when lead in the drinking water has been documented to reach its peak. That is why I am asking the question.

Mr. JOHNSON. Yes. We have the documentation of the times and dates that we did all of the sampling. It was done in strict compliance with the EPA requirements for sampling and identifying the evidence.

Ms. NORTON. Did you make those public right away, the rate?

Mr. JOHNSON. Sure. They have been made public.

Ms. NORTON. No, right away.

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. Mr. Johnson, within 30 days would you get your compliance with the Lead and Copper Rule during the months I

have just described in 2006 and 2007, that is between May and early July, and offer evidence that you informed the public?

Mr. JOHNSON. I am told that we do the testing in January through May. June is the reporting month, and we begin to start again in July.

Ms. NORTON. I am talking about 2006 and 2007. I don't want to quibble here. Just get it to me.

Mr. JOHNSON. Sure.

Ms. NORTON. And then get me how you informed the public.

Apparently there were errors made in your—I recall this very distinctly—your 2006 post partial pipe replacement data. Which lab made those errors?

Mr. JOHNSON. As I recall, I don't believe that there was a laboratory error; I believe that there was a dating error that confused the date that the sample was actually taken, versus the date that the sample was analyzed. That information, the way it was represented came out as an error. And we used two laboratories, and we are determining now which one of them made the error.

Ms. NORTON. I ask this question because when it was known that I would have this hearing residents of the District of Columbia asked me, because they say they have been unable to get this information from you about the lab, and if it wasn't the lab error and it was the date, apparently this matter was raised in a meeting with Council Member Jim Graham on February 24, 2008, and then a written inquiry was sent. These people watch you all after lead in the water.

Mr. JOHNSON. We are putting that data together now, and in terms of——

Ms. NORTON. Would you make it available to Council Member Graham and would you make it available to me within 30 days?

Mr. JOHNSON. Absolutely. But it simply was not available, so we couldn't actually give it to the——

Ms. NORTON. Why wasn't it available?

Mr. JOHNSON. Because we have to go back and determine where the error was made.

Ms. NORTON. You are talking about 2006, and people are still giving me that question here in April 2008. A written inquiry was sent to D.C. WASA on April 6, 2008. I raise this question because it is not a quibble because you have to respond to members of the public like a first priority, again because the public lost confidence. You have done a great deal to try to regain that confidence. Nothing can do it better than saying, look, here is what the real deal is, or, it will take us time to gather that information. Here is a date when it is going to be there.

Mr. JOHNSON. I think that we have advised them that it was going to take some time to pull the data together. We have two sets of data, one set of data that is compliance data that we provide to the EPA and is posted on the Web site and is out there, and then we have some other data that we are just collecting in order to satisfy ourselves that we are doing the appropriate thing.

Ms. NORTON. Or to satisfy the residents that you are doing the appropriate thing, and that is what they wanted to know. This is a date, for goodness sake. How long does it take to find out?

Mr. JOHNSON. We are researching it. It is a very recent issue.

Ms. NORTON. Two years of research? You can't afford that, Mr. Johnson and Mr. Martin. That is your job. Remember, I sat here and said, yes, it is not Congress' job, it is your job. I am going to hold you accountable too, sir.

Mr. MARTIN. Right. I agree.

Ms. NORTON. I have a problem that I remember raising in the first hearings that lead and copper pipes join together. Here is where science and follow-through and being willing to change or not change based on the science is so important. You put the lead and the copper together and you accelerate the lead erosion. There is a device which we understand is inexpensive called a dielectric. Apparently, you do not use dielectrics.

Mr. JOHNSON. That is correct.

Ms. NORTON. If you do use dielectric in order to keep from extending and accelerating lead pipe erosion, this is your time to inform the public.

Mr. JOHNSON. Ms. Norton, the acceleration of corrosion depends on a number of factors, and it is not just whether you connect a lead and copper pipe together. It depends on soil conditions and a number of other factors, and——

Ms. NORTON. Mr. Johnson, that——

Mr. JOHNSON. That is simply not correct, the information that you have.

Ms. NORTON. Let me just stop you here with respect to answers to our questions.

Mr. JOHNSON. OK.

Ms. NORTON. You notice that I am not looking for zero in terms of what science can provide. I have talked about the gold standard, and I have been real clear I know nobody is going to get the gold standard. Now you are trying to tell me other sources. I am asking a direct question about mitigation here through the use of dielectric, inexpensive device. Do you or do you not use it, yes or no?

Mr. JOHNSON. We do not.

Ms. NORTON. Why do you not use it?

Mr. JOHNSON. Because we don't believe, in these soil conditions and with the pipe that we are putting together, that it is necessary.

Ms. NORTON. So you think that there is no acceleration and extension of lead corrosion, and you have evidence to prove that?

Mr. JOHNSON. Yes, we do. We have an EPA report and study that was done that looked very specifically at this issue, and it indicated that there was a minuscule——

Ms. NORTON. So putting lead in cooper is OK?

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. All right. Submit that report within 30 days. You are under oath.

Mr. JOHNSON. We will do that.

Ms. NORTON. You are under oath. Both of you are. So if there is a mistake, admit it, but don't tell me unless you can, in fact, back up what you say. I ask some of these questions because the public has not been able to get answers to them.

Mr. JOHNSON. I am very mindful of that.

Ms. NORTON. Apparently this was a question that was submitted long ago, and according to the information my staff has gathered was a very exact date on February 21st. Again, at Council Member

Graham's meeting an engineer did finally admit that WASA had never used dielectrics. You say it was because they were unnecessary. Last thing I am going to do is say spend money on something that you don't have to spend money on. I do note that this is inexpensive, and since it is inexpensive and most of what you have to do is not, would you also submit the cost of it?

Mr. JOHNSON. Sure.

Ms. NORTON. I am told it is inexpensive. I don't want to hold anyone to that.

Mr. JOHNSON. Along with other information related to other problems that it can cause by using that particular device.

Ms. NORTON. Will you say that again? I am sorry.

Mr. JOHNSON. There are other associated problems with grounding of electricity within a residence that are caused by the use of that device, as well.

Ms. NORTON. Would you explain that, please? In other words, there is a harmful effect, you are testifying?

Mr. JOHNSON. Yes.

Ms. NORTON. And that would be?

Mr. JOHNSON. Well, because houses are typically grounded using the water pipe, and when you do this disconnect with the dielectric and the copper and lead fitting, it could very well break that ground and create electrical problems within the home. I will be glad to provide you with the research data associated with that, as well.

Ms. NORTON. I would appreciate that within 30 days, as well.

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. Here is an opportunity for you to explain something that I think is important for the public to know, and that is, when you increase the rate structure, a lot of it has to do with the surface, impervious surface rate structure, and, just to be as clear as I can without getting into technical matters, those large buildings are often the source of these impervious land structures, and so the water flows into the Anacostia and they cost and they increase pollution.

Let me see if I can find a neutral way to say this. Who in this region would be the No. 1—don't use the word villain, Eleanor—who would be the No. 1 land owner who is the source of the problem or problems from impervious surface runoff?

Mr. JOHNSON. Our initial look, it appears that the Federal Government probably owns the largest number of square feet of impervious cover.

Ms. NORTON. And I think you are certainly right. You heard me indicate I am having a hearing even tomorrow. We were going to call you to that hearing, but it seems unnecessary to do that, especially with your coming today. I know that the rate structure is being increased. Are you saying that the largest increase will come, because the Federal Government is a ratepayer, to the Federal Government?

Mr. JOHNSON. I think the largest shifting of cost will occur in the Federal customer category.

Ms. NORTON. What does that mean?

Mr. JOHNSON. We are not adding additional cost; what we are doing is unbundling the basic sewer charge as it currently exists, because it is all based on a volumetric charge now, so you will——

Ms. NORTON. But I thought there were going to be rate increases.

Mr. JOHNSON. Well, the rate increase, which is projected at 8.5 percent, and a portion of that——

Ms. NORTON. That was 8.5 percent?

Mr. JOHNSON. Yes, ma'am. A portion of that is water and a portion of that is sewer. On the sewer charge what we are attempting to do is take out the cost that is associated with the long-term control plan and segregate that, so instead of there being an 8 percent rate increase, it would probably be something on the order of a 3 to 4 percent rate increase on the sewer side, and we would collect the balance of that in this impervious area surface charge.

Ms. NORTON. And that will be charged to he or she who is responsible for it?

Mr. JOHNSON. That is what we are moving toward. Yes, ma'am. If you looked at a family of four in a house where they are washing and cooking and bathing and doing all the things that a family normally does, and they are paying their water and sewer charged based on the volume of water that they use, so we base how much you are going to pay for your sewer cost on the number of gallons of water you use. And you look across the street and let's say that there is a large big box store and that big box store has 300,000 square feet under roof and two or three acres of parking, and maybe only one or two toilets inside, then their volumetric charge is going to be disproportionate to that of the family of four.

So what we are trying to do is equalize this so that the cost causers are the ones that are paying for the actual cost of this particular program, so that the single family——

Ms. NORTON. Then I don't understand why this has been controversial. Do people understand? Will the average homeowner get a rate increase? Perhaps a rate reduction?

Mr. MARTIN. Ms. Norton, I think the issue is that this is a new rate. It is a change in every customer's bill. Part of our program from the Board's perspective is to make sure that we explain this in a very transparent way so that people understand exactly——

Ms. NORTON. Well, Mr. Martin, will there be an increase to the average homeowner?

Mr. MARTIN. We don't have the impervious surface rate actually defined at this point because we are still working on it, but the preliminary numbers say no, probably not. When you add up the water rate by volume, the sewer rate by volume, and the rate for impervious surface, it is probably about the same, a few pennies one way or the other. That is the preliminary data. Let me not say that is——

Ms. NORTON. I know this is hard to explain, because when you get into what most of us—certainly I didn't know anything about this division of cost or that it was all bundled. I am sure this is going to be hard to explain. When will you know for sure?

Mr. JOHNSON. There are some new customers, too. There are people who have typically not been a customer, people who own——

Ms. NORTON. Like who?

Mr. JOHNSON [continuing]. Parking lots and parking decks who don't get a water bill.

Ms. NORTON. How in the world could they not have been customers?

Mr. MARTIN. They don't have water service.

Mr. JOHNSON. They don't have water service, so they are not getting——

Ms. NORTON. They don't have any water service in a parking lot of any kind?

Mr. JOHNSON. In a flat surface parking lot, typically no.

Ms. NORTON. Unless they are part of a building.

Mr. JOHNSON. Right. And so those are customers that will be added. I can't say that they will be coming on willingly.

Ms. NORTON. When will you be able to definitively—you did the right thing to get out here early and alert people, but, of course, in the 15-second ad atmosphere and all of us are too busy, this is seen by some, I think, as a rate increase. Mr. Martin has offered very helpful and important testimony that it probably isn't, given who the source of the problem is.

When, Mr. Martin or Mr. Johnson, will you have a definitive answer?

Mr. MARTIN. We have proposed rates as of earlier this year that are——

Ms. NORTON. Well, they were a rate increase.

Mr. MARTIN [continuing]. Combined rates. They were combined rates that are not unbundled.

Ms. NORTON. Why would you do that? If you are trying to unbundle, why would you alarm people by giving them all a rate increase?

Mr. MARTIN. Because that rate increase is probably going to reflect in their total bill, that same rate increase. In other words, we have a 10-year plan that——

Ms. NORTON. You just said that there would not be a rate increase for the average homeowner. I asked you that.

Mr. MARTIN. That is the total average bill for a homeowner. What we proposed back in February would reflect an 8.5 increase. When we unbundle it and then add up what the average homeowner would get, it will be about 8.5 percent with everything added up together.

Ms. NORTON. All right. For the record, there will be an increase to everybody?

Mr. MARTIN. Yes.

Ms. NORTON. Unbundling only lets you know how much of it comes from your impervious land, and there will be an increase because of the CSO, isn't it, because of combined sewer overflow?

Mr. MARTIN. In part, correct.

Ms. NORTON. I just think you have to be candid with people. There is no free lunch. And if you are trying to make the increase fall more on those who are most responsible, say that, but if you have to increase everybody's water rate tell them why. There is concern about water purity here. If you tell them why, I think people really are willing to pay.

This is hard to explain, but remember it was the explanation of lead in the water that led to issues for WASA before.

Now, these water rates apparently are not progressive. You may have read in the Post, I guess it was, in recent days that one-third of families in the District of Columbia are poor. Why should a poor family pay the same water rate that Eleanor Holmes Norton and Jerry Johnson and Robin Martin pay?

Mr. MARTIN. Ms. Norton, I think that is a very good question, and that is something that, since I have been on the Board, has been on the top of mind of every District member whose responsibility is to make sure that not only do we have as reasonable rates as possible, but that they are affordable.

My feeling as Chair in navigating through the rate structure is that we need to get the impervious surface rate introduced, and that the next project after that is to, in fact, look at our rate——

Ms. NORTON. After the poor people have already paid, then look to see whether or not. Then, of course, you don't give them back any money.

Mr. MARTIN. We have to understand the issues that are involved in terms of making sure the public is aware of the issue——

Ms. NORTON. Mr. Martin, look, let me suggest something. Part of the problem for poor people is they often don't own the property. Calculating in some fashion—this is not rocket science—how much of what you pay comes from the price of water, as it were, is kind of elementary math. I am trying to keep these people from being socked in the middle of one of the worse recessions anyone can remember, and I don't think, given the fact that you have a pretty hefty raise, and you say everybody is going to have it, 8.5, I am going to have it and the poor lady down the street is going to have it, I must ask you if you are, in fact, going to put this rate on people, why you can't do the climate changes or a rebate? I don't even want to suggest. There are a thousand ways to say to a poor person you don't have to pay the same amount as Robin Martin does.

In the District of Columbia we are famous for rebates of various kinds to poor people. We have done it with taxes here. There are multiple ways to go about this, but if you lost your job and that is what we have now, if you have no sub-prime mortgage but you are feeling all of the reverberations of the present recession, all you need is an 8.5 increase, which landlord, assuming you do not own the property, will be happy to pass along to poor tenants.

So I am asking a very serious question here. I am not questioning the need for an increase. I don't think you are trying to throw rates at people. I am such a big proponent of doing something about combined sewer overflow. I think you are trying to hold the Federal Government and other big landowners in the way they should, but I don't see that you—in fact, you have testified that you will get to the poor people after they have already been socked with 8.5, because first you have to do the rate increase. You have already announced that. Then you have to do the unbundling, then you will get to them. Of course by then nobody is saying, here's your money back. Last time I saw an agency do that I cannot remember.

So I have to ask you why you cannot do it, or, put another way, why you cannot walk and chew gum at the same time.

Mr. MARTIN. Ms. Chairman, I think we are. And let me correct my statement before. I think I was responding to a question about

the rate structure. There are two programs that WASA has had for a number of years that, in fact, address that exact question. One is called the splash program, in which we solicit from ratepayer and billpayers voluntary contributions which we then distribute to people who are in need. We have a customer assistance program which is tied in through the other utilities where——

Ms. NORTON. Well, the one-third of families who will be hit with an 8.5 increase in their water bill have access or get a rebate through—is it a rebate they get? Is it a lower rate?

Mr. MARTIN. Go ahead, Jerry.

Mr. JOHNSON. In the case of the cap program, the first four CCFs, or about 3,000 gallons of water——

Mr. MARTIN. What's a CCF?

Mr. JOHNSON. A CCF is 748 gallons of water, so about 3,000 gallons of water is provided at no cost to low-income customers in the District of Columbia.

Ms. NORTON. How do you know if a low-income customer is getting that?

Mr. JOHNSON. We do it the same way that the power company and the LIHEAP program. If you qualify for LIHEAP——

Ms. NORTON. Oh, so you could do this easily? You already do it?

Mr. JOHNSON. Yes.

Mr. MARTIN. We do it.

Ms. NORTON. OK. So the answer to my question that is are you willing to do this—I will call it a rebate. You can call it what you like—with one-third of working families who are poor in the District of Columbia with respect to this 8.5 percent increase in the water rate? Can they be included? You are telling me that some of them are already included. Are you not, or are you? Are they already included?

Mr. JOHNSON. Yes.

Mr. MARTIN. Some of them are, certainly.

Mr. JOHNSON. Yes.

Mr. MARTIN. Absolutely.

Mr. JOHNSON. Those same people who would quality for the LIHEAP program would qualify for this same discount, and it is run by the same people who run the program for——

Ms. NORTON. All right. Unfortunately we have a terrible period here. There are all kinds of people not in the LIHEAP program. My question to you is: will families who can demonstrate that they are poor—and you know what that standard is—be eligible—this would be on an annual basis. This is not forever—be eligible for this reduction, not just a LIHEAP family, the family who worked yesterday and is not working today. Will that family, if that family submits evidence that they don't have a job, have no means to pay for an increase, will that family be eligible for what you are telling me you already do for poor people?

Mr. MARTIN. That is not something that is in the policy at this point. We have been reviewing both the CAP program and the splash program because one of the things that we are finding is a lower participation rate than we think is appropriate, or reflects what the needs are of the community.

Ms. NORTON. So you prove my point. You have plenty of room left in that program.

Mr. MARTIN. But we are attempting to figure out why people aren't participating. We think more people ought to be participating and qualified to participate.

Ms. NORTON. I am scratching my head. OK. Given the fact that you already have some people who are not participating, how about those who would like to participate as soon as the 8.5 increase goes into affect? Is there any reason why that would be inappropriate, Mr. Martin?

Mr. MARTIN. Ms. Norton, we would have to define what the qualifications are to be——

Ms. NORTON. You already know what they are. You just testified.

Mr. MARTIN. Well, if they qualify——

Ms. NORTON. You just testified that LIHEAP——

Mr. MARTIN. Yes.

Ms. NORTON. The qualifications are defined as poor under the Federal Government's standards. I mean, we really shouldn't answer me that way. If you don't know or you are unwilling, you are not going to get away with that kind of answer to me, Mr. Martin. I am asking you a straight-out question. In the middle of what some people are defining as a recession—I certainly would not like to use that word—added on to the problems people are already having with bills for necessities such as water and heat, if there are such families and a third of them in the District of Columbia are poor, I am sure I speak for my colleagues when I speak of those who are poor in their jurisdictions, will you take an already existing program and make it available to families who, when this program goes into affect, cannot pay 8.5 using the same evidence and proof that you use on LIHEAP program?

Mr. MARTIN. Absolutely. If they qualify under LIHEAP, they will qualify here.

Ms. NORTON. So I don't know what took us so long to get to that answer. I tell you what, you said if they qualified for LIHEAP but are not in LIHEAP——

Mr. MARTIN. No, no. I misunderstood your question. The answer is, of course.

Ms. NORTON. OK. They are not in LIHEAP, but they would qualify under LIHEAP or the appropriate standard, then they could, in fact, get this reduction?

Mr. MARTIN. Yes. Absolutely.

Ms. NORTON. I don't know why you didn't say that in the first place.

Mr. MARTIN. I misunderstood the question. It is my error.

Ms. NORTON. My fault then. Sorry, I will try to be clearer.

Mr. JOHNSON. Ms. Norton, I think that one thing we keep in mind as we go about doing these programs is that the only source for payment are the other customers, so we are, in essence——

Ms. NORTON. Have you ever heard of progressive taxation?

Mr. JOHNSON. Yes, ma'am.

Ms. NORTON. Have you ever heard of the earned income tax credit? At the big dollars we are paying you, Mr. Johnson, shouldn't you be paying more than people who are now on the earned income tax credit?

Mr. JOHNSON. I fully understand what you are saying. I just want to make sure——

Ms. NORTON. There have been people who tried to repeal progressive taxation here. They haven't quite succeeded, notwithstanding tax cuts for the richest Americans. So yes, there is a shift of cost. That is why you pay more Federal income taxes than the poor people I am talking about.

Mr. JOHNSON. I know. I had the experience yesterday.

Ms. NORTON. And why you should. You make a handsome living compared to people who are going from hand to mouth.

I am almost through. Huge controversy about nitrogen and how you are handling nitrogen. You and I have worked together on trying to get the nitrogen out of the water. I go every year to try to get more and more money. Then I find you working at cross purposes with me. Scientists now say we won't reach our goal in reducing nitrogen by the date we had set, 2010. Do you agree?

Mr. JOHNSON. That is correct.

Ms. NORTON. Why would you pursue in court or other legal strategies in the face of evidence about WASA's practices, for example, EPA regulators just this last month—and EPA will tell you they are not my favorite people—rejected, that is to say its Environmental Appeals Board, your arguments regarding nitrogen were rejected, and I understand they have been rejected twice.

I understand you have yet another appeal going forward. Why are you resisting what the EPA says are your obligations to pursue efforts to reduce nitrogen, one of the most lethal and dangerous pollutants? Why are you going to court against the regulators or otherwise pursuing legal remedies through the administrative process when the regulators keep giving you the same answer and you tell me yourself that by 2010 you are not going to meet the goal that has been set for you to meet?

Mr. JOHNSON. Well, let me start. I think that is a multi-part question, Ms. Norton. Let me start with the 2010 piece of it first.

Simply because of the time that it takes to design, construct, and build these facilities, it is literally not physically possible to get it done by 2010. I mean, we have to——

Ms. NORTON. Is that the argument that you are making, that it is just a time factor?

Mr. JOHNSON. I am trying to answer the question in segments, if I may.

That is the question with respect to timing. We have worked with the Environmental Protection Agency and worked with them on the technical and engineering side to understand that there is a timeframe in which we can complete this, and we have agreed tentatively that we can accomplish the construction of some $950 million worth of facilities between now——

Ms. NORTON. Say that again, please.

Mr. JOHNSON. $950 million worth of facilities that have to be constructed at the Blue Plains Wastewater Treatment Plant.

Ms. NORTON. Why did you file another protest on April 1st?

Mr. JOHNSON. I am going to come to that part. So we have agreed on a date that we can get everything constructed. Assuming EPA approval of the plan, we could get it constructed by 2014, and that by 2015, January 2015, we would be in compliance. So that is getting everything in the ground.

Ms. NORTON. Did you say EPA has agreed to that?

Mr. JOHNSON. Yes.

Ms. NORTON. Why are you filing an appeal then?

Mr. JOHNSON. The appeal has to do with some of the technical aspects of the plan. One has to do with a Federal consent decree and the method by which they wanted to include the dates and timeframes for getting it done.

Ms. NORTON. Well, shame on you. You have a Federal consent decree, so you would think that you would know you had to do that anyway.

Mr. JOHNSON. Well, if we——

Ms. NORTON. If you signed it, that is what a consent decree is.

Mr. JOHNSON. The consent decree has to do with the combined sewer overflow project, not the total nitrogen project. We——

Ms. NORTON. And you don't see the two as related, intimately related?

Mr. JOHNSON. They are related, but that, too, took a considerable amount of time working with EPA to convince them that we ought to look at the two projects together, as opposed to having a stovepipe over here for CSO and another one over here for total nitrogen, and it took some time to convince them that, from an engineering and environmental——

Ms. NORTON. All right. If you convinced them, why are you appealing?

Mr. JOHNSON. OK. I am coming to that.

Ms. NORTON. April 1st you filed another appeal.

Mr. JOHNSON. So we joined. We were on the same side as the Chesapeake Bay Foundation in saying, put it in the permit, because that is the simplest, easiest, quickest way to get it done, and that is where the EAB ruled. They said yes, it should be included in the permit, so we were right on that point.

The other point that we appealed had to do with the allocation of nitrogen for the wastewater treatment plant, and the allocation we believe was not done on a scientific basis, and as a result we have had certain portions of our allocation for the Blue Plains plant that has been allocated to both Virginia and to Maryland. We are simply trying to recover that so that we get the full benefit of all the allocation that we should get at the plant.

Ms. NORTON. Are you telling me that EPA would object to your recovering that from Maryland and Virginia?

Mr. JOHNSON. Well, I mean, that is what the allocation appeal is all about. That is what the basis of it is. It is a very——

Ms. NORTON. Why did EPA object to where you get the recovery from?

Mr. JOHNSON. I think you would have to ask. There are some representatives here.

Ms. NORTON. You know why. They would not tell you by fiat without telling you why, Mr. Johnson. You can't come here and testify to something like that and say, oh, I don't know. You have to ask them.

Mr. JOHNSON. Ms. Norton, I——

Ms. NORTON. You know. They told you why.

Mr. JOHNSON. I do not know. We firmly believe that——

Ms. NORTON. Did you ask them?

Mr. JOHNSON. They said they have a right to do it.

Ms. NORTON. Right to do what?

Mr. JOHNSON. To move the allocation from Blue Plains to Maryland for the plants in Maryland. We think that allocation is rightfully ours.

Ms. NORTON. I want to thank both of you for your testimony.

Mr. JOHNSON. It is a very complex issue. It also has to do with reordering the way that we operate the wastewater treatment plant, and in reordering the way that we operate the wastewater treatment plant there are a couple of outfalls there that are designated for different purposes. And if a certain loading requirement is placed on one versus the other, then it creates a whole different scenario in the way that we operate both the CSO control program and the nitrogen program.

And let me say that, in working with EPA and getting them to agree on this change in technology and the way that we are operating the plant, we were able to save our ratepayer, both in the District of Columbia and the surrounding jurisdictions, over $500 million.

Ms. NORTON. You know, Mr. Johnson, I commend you on that. One of the things I most admire is negotiating out matters. A lawyer though I be, I hate litigation as a way, a most expensive way, to settle matters. Your testimony seems to be, see, we were able to set without, and yet you have a string of protests and other challenges to EPA where they and you end up coming to some resolution. I particularly applaud you when you come to resolutions that save money.

On the other hand, do not expect me to be a continuing partner working my you know what off over here for more funds for WASA if WASA is working at cross purposes with me by opposing a regulator who I do not regard as very strict.

Mr. JOHNSON. I assure you——

Ms. NORTON. I mean, we took them to task on lead in the water more than we did you.

Mr. JOHNSON. I assure you, Ms. Norton, that we are not working at cross purposes and that we are working diligently with EPA in order to try to resolve the outstanding issues. We have met with them as recently as last week, last Wednesday, and I believe that substantial progress was made at that meeting. We have already moved forward to—I don't want to admit this in front of Mr. Capacasa, but we have already prepared the documents to go out to bid for the project management and designer on the project. So we are moving the process forward, even though we have not gotten final approval from EPA on the design plan. And we will continue. We are very diligent and serious about the project.

Ms. NORTON. Mr. Martin and Mr. Johnson, because we try to have these on an annual basis, we are going to ask you difficult questions. We don't have endless hearings. I think that the region has indicated some confidence in your work with some real caveats. We understand the huge cost and cost/benefit problems you face in trying to decide what to do. We have straightened out some of your business very recently.

And I do want you both to know that, speaking from the perspective of someone who saw the decline, fall, if not the collapse of WASA, at the time we essentially built a new basis for the WASA

you, yourself, Mr. Johnson were chiefly responsible for improving, speaking from the perspective of knowing from whence you started at ground truly zero or below to where we have come today, you deserve some credit.

Do expect that this committee will and intends to do annual oversight, and I do ask you this: when people do not get responses quickly to WASA, they call their Congresswoman. And particularly when they can't get responses through their Council member, like Jim Graham, they have to go to somebody else. I have enough work. So, just as I said that you should get responses to me within 30 days, I ask you—and I don't want to set the time period—to remember that, as part of restoring trust in WASA, a WASA that you had no part in collapsing, part of restoring trust in it, may be the most important thing you could do would be responses very quickly to questions that are asked, particularly since you seem to believe you have the answer.

If you do not have the answer, Members of Congress find, because people often come to us with things—it is not our jurisdiction, we can't do anything about it. You know, the very fact that we responded promptly, heard them out, told them what our problem is gives people lots of confidence in their Member, which is how they get elected.

I suggest that imitating that would erase some of the controversy that continues to swirl among some with respect to some of your work.

Congratulations on the work you have done. You will find us standing behind you with the job that lies before you.

Thank you very much.

Mr. MARTIN. Thank you very much.

Mr. JOHNSON. Thank you, Ms. Norton.

Ms. NORTON. Panel three, Joe Capacasa, I think, Director of Water Protection Division for the Environmental Protection Agency in Region III, responsible for the Clean Water Act, safe drinking water programs here and in the mid-Atlantic States. Thomas Jacobus, general manager of Washington Aqueduct. Doug Siglin, director of Federal Affairs, Chesapeake Bay Foundation. Robert Boon, co-founder, Anacostia Watershed Society.

Would you all stand, because it is the committee's policy that all witnesses are sworn in.

[Witnesses sworn.]

Ms. NORTON. The record will show that each witness answered in the affirmative.

Your entire statement will be recorded in the record. The green light is there to indicate that your 5 minutes have passed. The yellow light, of course, is a warning light, and the red light tells you the time has expired. We don't gavel down witnesses, but you see the hour and how we certainly had to question the last witnesses, so that we ask you to stay to the greatest extent possible within the timeframes allowed.

Mr. Capacasa.

STATEMENTS OF JON M. CAPACASA, DIRECTOR OF WATER PROTECTION DIVISION FOR WATER, ENVIRONMENTAL PROTECTION AGENCY; THOMAS JACOBUS, GENERAL MANAGER, WASHINGTON AQUEDUCT; DOUG SIGLIN, FEDERAL AFFAIRS DIRECTOR, CHESAPEAKE BAY FOUNDATION; AND ROBERT BOONE, PRESIDENT, ANACOSTIA WATERSHED SOCIETY

STATEMENT OF JON M. CAPACASA

Mr. CAPACASA. Thank you, Madam Chair and members of the committee, for the opportunity to update you on our activities at EPA with regard to WASA.

I am Jon Capacasa. I work in the Region III office of EPA in Philadelphia. I am the Director of the Water Protection Division there and am pleased to be here today.

EPA's Region III's role in relation to WASA is to serve as the Clean Water Act permitting and enforcing agency in D.C. and as the primary enforcement agent for the Federal Drinking Water Act.

In addition to our regulatory role, we administer the clean water and safe drinking water State revolving fund funding programs in D.C., manage special appropriation projects for capital improvements, and work in partnership with local utilities to protect regional water quality.

We are in frequent contact with D.C. WASA, and also in close cooperation with the D.C. Department of Environment, as well as D.C. government and other regional water utilities.

Regarding the quality of drinking water services in District, D.C. WASA and the Washington Aqueduct report directly to EPA Region III on the results of the sampling analysis they do, and these results are audited periodically.

Based on this information, EPA can report that the drinking water serving the District of Columbia meets all Federal health-based standards and the system is in compliance with all national primary drinking water regulations.

A requirement of EPA regulations is that utilities notify their customers annually through something called a consumer confidence report about the quality of water served and its compliance status for regulated parameters. The latest consumer confidence report was submitted to EPA and the public by WASA in June 2007 and has been provided to the committee for your use.

D.C. WASA reports that the D.C. water system has been at or below the action levels for lead and copper under the lead and cooper regulation for three consecutive years since the report in early 2005. The latest report submitted to EPA by WASA states that the 90th percentile of over 100 samples taken was 10.9 parts per billion below the action level of 15 parts per billion or greater under the Federal rule.

The D.C. water system is now meeting the requirements of the Lead and Copper Rule such that additional lead service line replacements are no longer required, in accordance with Federal regulations.

This spring EPA will conduct a triennial inspection of the water distribution system in the District, and we will continue to coordinate research on planned and potential water treatment changes at the Washington Aqueduct.

With regard to wastewater controls on the wastewater regulatory front, EPA issues and ensures compliance with Clean Water Act permits in the District. Such permits are issued to D.C. WASA for operation of the Blue Plains facility and for the control of combined sewer overflows into local rivers.

In April 2007 EPA issued an amended Clean Water Act permit to D.C. WASA which incorporates new limits for nutrient reduction to the Potomac River and Chesapeake Bay. Blue Plains is the largest point source of nutrients for the bay. I would like to point out that WASA has already achieved the 2010 Chesapeake Bay program load cap for phosphorus reductions, and the new nitrogen limit of no more than 4.6 million pounds annually will require a substantial upgrade to the facility.

In 2007 WASA developed a total nitrogen wet weather plan for the Blue Plains facility to meet the new nitrogen limit. WASA presented that plan to EPA and we have commented on it extensively. The submitted plan involves major modifications to the Blue Plains facility and to the previously approved wet weather plan for control of combined sewer overflows.

Given the complexity and extent of this major capital project, EPA and WASA have agreed to a 7-year compliance schedule until July 2014 for project completion. EPA intends to reissue the WASA's Blue Plains permit with year with a compliance schedule to get the job completed. This permit will be submitted for public review and comment as is required.

With regard to the enforceable schedule of control of combined sewer overflows, to ensure the protection of the Anacostia River, Rock Creek, and the Potomac from the effects of discharge from the combined sewer system, EPA initiated Federal enforcement action earlier in this decade against WASA which resulted in a 2005 Federal consent decree. This decree provides WASA with a long-term enforceable compliance schedule for the completion of those controls under the national CSO policy and the Clean Water Act.

We are very pleased to note that later this year WASA is on schedule to achieve a 40 percent reduction in overflows to the Anacostia River. When that plan is fully implemented, overflows to the Anacostia River are expected to be reduced by 98 percent in an average rainfall year.

EPA will continue to carry out its duties in administration of the clean and safe drinking water programs in the District, in close contact and cooperation with WASA and local officials.

With regard to Federal financial assistance, in D.C. clean water and drinking water State revolving fund programs provide annual grants to D.C. government. In the past 5 years in D.C. the clean and safe drinking water revolving fund programs provided grants in the amounts of $23 million under the clean water side and $39.5 million from the drinking water revolving fund. Such funds are directed to priorities established by D.C. government using an intended use plan, and typically 100 percent of those funds are directed to capital improvement projects of WASA.

EPA also administers infrastructure projects authorized through special congressional appropriations, and in the last 6 years these have totaled approximately $3.5 million.

I would last like to mention the fact that we are also working in partnership for watershed and source water protection. In addition to our regulatory and funding roles, we work through innovative partnerships in the D.C. area for drinking water source protection and the Potomac Basin for water security and preparedness, and, as part of the newly formed Anacostia Watershed Restoration Partnership. EPA has been a leader and active participant in the partnership efforts to restor the Anacostia River. EPA and WASA are members of what is called the Potomac River Basin Drinking Water Source Partnership, which is an organization to actively promote protection of drinking water sources in the basin.

We will continue to work in close cooperation with D.C. WASA and D.C. government in addressing drinking water and wastewater issues and needs.

Again, thank you for this opportunity. We will be glad to answer questions.

Thank you.

[The prepared statement of Mr. Capacasa follows:]

TESTIMONY OF
JON M. CAPACASA
DIRECTOR, WATER PROTECTION DIVISION
ENVIRONMENTAL PROTECTION AGENCY, REGION 3
BEFORE THE
FEDERAL WORKFORCE,
POSTAL SERVICE AND THE DISTRICT OF COLUMBIA
SUBCOMMITTEE OF THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
April 15, 2008

Thank you Chairman Davis and members of the Subcommittee for this opportunity to update you on EPA activities related to the operations of the DC Water and Sewer Authority (DCWASA). I am Jon M. Capacasa, Director of the Water Protection Division for EPA's Mid Atlantic Region 3 and I am pleased to be here on behalf of EPA to help address this important subject.

EPA Region 3's role in relation to DCWASA is to serve as the Clean Water Act permitting and enforcement Agency for DC and as the primary enforcement agent under the federal Safe Drinking Water Act. Federal clean and safe drinking water programs in the District are not yet delegated to local officials, thus we play a direct role in their oversight and administration. In addition to our regulatory role, we administer the Clean Water and Safe Drinking Water State Revolving Act funding in DC, manage special appropriation projects for capital improvements to DC WASA facilities, and work in partnership with local utilities to protect regional water quality. We are in frequent contact with DC WASA and also work in close cooperation with the DC Department of the Environment (DDOE), as well as others in DC government and the other regional water utilities.

Drinking Water Quality and Compliance Status

Regarding the quality of drinking water services in the District, DCWASA and the Washington Aqueduct report directly to EPA on the results of sampling and analysis and these results are audited periodically. Based on this information, EPA can report that the drinking water serving the District of Columbia meets all federal health based standards and the system is in compliance with all National Primary Drinking Water Regulations. A requirement of EPA's regulations is that utilities notify their consumers annually through a Consumer Confidence Report (CCR) about the quality of water served and its compliance status for regulated parameters. The last CCR report submitted to EPA and the public by DCWASA was issued in June 2007and has been provided to the Committee.

The DCWASA reports that the DC water system has been at or below the Action levels for lead and copper under the Lead and Copper Regulation (LCR) for 3 consecutive years since the report covering the January-June 2005 monitoring period. The latest report submitted to EPA by DCWASA states that the 90th percentile of over 100 samples taken was a 10 ppb level, below the action level of 15 ppb or greater. This follows a period earlier in the decade where changes to treatment of drinking water triggered an unusual increase in corrosivity of the water and tap water

lead levels exceeding the Action level. DCWASA has been in substantial compliance with the requirements of enforcement actions issued by EPA related to the exceedance of the Action level. The DC water system is now meeting the requirements of the LCR such that additional lead service line replacements are no longer required in accordance with the federal regulations.

This summer, EPA will conduct its triennial inspection of the water distribution system of the District. We will also continue to coordinate research on planned and potential water treatment changes at the Washington Aqueduct with a focus on simultaneous compliance – making sure changes for one regulation do not impact compliance with another rule.

Wastewater Controls for Nutrient Pollution

On the wastewater regulatory front, EPA issues and ensures compliance with Clean Water Act (NPDES) permits in the District. Such permits are issued to DC WASA for operation of the Blue Plains Advanced Waste Treatment facility and for the control of combined sewer overflows into local rivers. In addition, in a separate portion of the District, EPA also issues a Storm Water permit to the District of Columbia government for proper operation of the municipal storm sewer system and control of pollutants in line with federal technology and water quality based limits. This permit is administered by the DDOE.

In April 2007, EPA issued an amended Clean Water Act permit to DC WASA to incorporate new limits for nutrient reduction to the Potomac River and Chesapeake Bay. Blue Plains is the largest point source of nutrients in the Chesapeake Bay watershed. WASA has already achieved the 2010 Chesapeake Bay Program load cap for phosphorus reduction. The new total nitrogen limit of no more than 4.6 million pounds annually will require a substantial upgrade to the Blue Plains facilities.

In 2007, WASA developed a Total Nitrogen/Wet Weather Plan for the Blue Plains facility to meet the new nitrogen limit. WASA has presented this plan to EPA and EPA has provided comment. The submitted plan involves major modifications to the Blue Plains facility and to the previously developed Wet Weather Plan designed for control of CSOs. The submitted plan promises to not only meet the new nitrogen limits, but also will further reduce CSO overflows into the Anacostia. Given the complexity and extent of this major capital project, EPA and DCWASA agreed on a 7-year compliance schedule, until July 2014, for project completion. During the summer of 2007, WASA public noticed this plan and its schedule for completion. EPA intends to reissue the WASA Blue Plains Permit with a compliance schedule during this year. This permit will be submitted for public review and comment prior to finalization. WASA has stated that it will continue to implement this Plan while the permit is being updated to incorporate the compliance milestones.

Enforceable Schedule for the Control of Combined Sewer Overflows

To ensure the protection of the Anacostia River, Rock Creek and the Potomac River from the effects of discharges from the combined sewer system, EPA initiated federal enforcement action earlier in this decade against WASA which resulted in a 2004 federal consent decree. This decree provides WASA with a long-term enforceable compliance schedule for the completion of controls in conformance with the National CSO Policy and the Clean Water Act. We are pleased to

note that later this year WASA is on schedule to achieve a 40% reduction in CSO overflows to the tidal Anacostia River. When the Plan is fully implemented, overflows to the Anacostia River are expected to be reduced by 98% in an average rainfall year.

Under the Clean Water Act, EPA or the states are required to develop Total Maximum Daily Loads (TMDL's), or pollution budgets if you will, for those pollutants that are impairing waters of the United States. TMDLs have been developed for many waters in the District including the Anacostia and Potomac Rivers. In these TMDL's, loadings are allocated to both point and non-point sources of pollution such that, when those loadings are achieved, the applicable water quality standards will be met. For a point source, including the Blue Plains facility, its permit effluent limit is required by regulation to be "consistent with the assumptions and requirements" of that point source's load allocation in the TMDL. EPA has completed or approved over 15 TMDLs for the interstate Anacostia River, as well as a Potomac River PCB TMDL and others.

EPA will continue to carry out its duties in the administration of clean and safe drinking water programs in the District in close contact with DCWASA and local officials.

Federal Assistance to DCWASA

In DC, Clean Water (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs provide annual grants to DC government. In the past 5 years in DC, Clean and Safe Drinking Water State Revolving Fund programs provided grants in the amounts of $23 million from the CWSRF and $39.5 million from the DWSRF. Such funds are directed to priorities by DC government using an Intended Use Plan. Typically, 100% of the available funds are directed to capital improvement projects of the DC WASA. As part of the Drinking Water State Revolving Loan Fund program, EPA is providing grant assistance for lead service line replacements. In February 2008, a special appropriations grant of $481,000 was also approved for this purpose.

EPA also administers infrastructure projects authorized through special Congressional appropriations. In the last 6 years, this has amounted to approximately $3.5 million dollars for various water and sewer projects

Interstate Partnerships for Watershed and Source Water Protection

In addition to its primary regulatory and funding roles in DC, EPA also works through innovative partnerships in the DC area for drinking water source protection in the Potomac River basin, for water security and preparedness, and as part of the newly formed Anacostia Watershed Restoration Partnership. EPA has been a leader in the partnership efforts to restore the Anacostia River. EPA and DCWASA are members of the Potomac River Basin Drinking Water Source Protection Partnership which is an organization of Potomac Basin water suppliers, regulators and stakeholders whose goals are to reduce threats throughout the watershed that would impact the quality of drinking water served downstream.

EPA will continue to work in close cooperation with DCWASA and DC government in addressing drinking water and wastewater issues and needs. Thank you again for the opportunity to provide this update and I would be glad to answer any questions the Committee might have.

Mr. DAVIS OF ILLINOIS [presiding]. Thank you very much.

We will proceed to Mr. Jacobus.

STATEMENT OF THOMAS JACOBUS

Mr. JACOBUS. Thank you, Chairman Davis and members of the subcommittee. I am Tom Jacobus, the general manager of Washington Aqueduct. Thank you for inviting me here today to discuss drinking water quality and the interaction between the Washington Aqueduct and the District of Columbia Water and Sewer Authority.

Washington Aqueduct is a public water utility providing wholesale service to the District of Columbia; Arlington County, VA; and the city of Falls Church service are in northern Virginia. It is a Federal entity that is part of the U.S. Army Corps of Engineers Baltimore District.

Washington Aqueduct's working relationship with D.C. WASA is sound and productive. Working together with effective oversight from EPA Region III, we provide the residents of the District of Columbia with excellent water, delivered with exceptionally high reliability at reasonable cost.

Washington Aqueduct also works well with other Federal, State-level, and local agencies that have stewardship responsibilities over physical and biological resources. That, coupled with our interest in working with private advocacy groups, gives us the opportunity to contribute to solutions to environmental issues.

One of the great strengths I see in both of our organizations, the Washington Aqueduct and WASA, is our willingness to continually evaluate our performance and to make improvements wherever we can. The public expects and they should receive no less.

Washington Aqueduct's treatment plants employ multiple barriers to remove physical, chemical, and biological contaminants. We are fully in compliance with all drinking water regulations, and in many cases achieve standards far more conservative than the national regulations. However, as the potential contaminants become more complex and the ability to detect them in extremely low levels advances, we must continue to evaluate what changes in treatment may be needed to meet emerging Federal regulations and public health standards.

We, along with Fairfax Water and the Washington Suburban Sanitary Commission, will cooperatively begin to acquire more data on pharmaceuticals and endocrine-disrupting compounds in general. The levels found to date have been extremely low, but we believe it is our responsibility to continue to look into the environment and see the water as we are using as our source water and learn more about it. We take that on willingly and we believe it is our responsibility.

The Washington Aqueduct's financial needs are approved and supported by the Wholesale Customer Board. This board's principals are the general manager of D.C. Water and Sewer Authority, the Arlington County manager, and the city manager of the city of Falls Church. They are supported in that board's actions by their utility staffs. The board represents the population served by the water produced at Washington Aqueduct's Dalecarlia and McMillan water treatment plants. Its members report to their authority

board or to their county or city government. In my judgment, this arrangement works very well.

Thank you again for the opportunity to be here today to give testimony. I look forward to responding to any questions you may have.

[The prepared statement of Mr. Jacobus follows:]

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT OF

Mr. Thomas P. Jacobus
General Manager
Washington Aqueduct

BEFORE THE

Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Committee on Oversight and Government Reform

HOUSE OF REPRESENTATIVES

April 15, 2008

Chairman Davis and Members of the Subcommittee, I am Tom Jacobus, General Manager of Washington Aqueduct. Thank you for inviting me here today to discuss drinking water quality and the interaction between Washington Aqueduct and the District of Columbia Water and Sewer Authority (DC WASA).

You asked me to address a number of issues pertaining to Washington Aqueduct's interaction with DC WASA.

Before I get into the details of what Washington Aqueduct does and how it does it in conjunction with DC WASA, let me say that Washington Aqueduct's working relationship with DC WASA is sound and productive. Working together – with effective oversight from Region 3 of the United States Environmental Protection Agency -- we provide the residents of the District of Columbia with excellent water delivered with exceptionally high reliability at a reasonable cost.

Washington Aqueduct also works well with other federal, state-level, and local agencies that have stewardship responsibilities over physical and biological resources. That, coupled with our interest in working with private advocacy groups, gives us the opportunity to contribute to solutions to environmental issues.

One of the great strengths I see in both of our organizations is our willingness to continually evaluate our performance and to make improvements wherever we can. The public expects and should receive no less.

Background on Washington Aqueduct

Washington Aqueduct is a public water utility providing wholesale service to the District of Columbia, Arlington County, Virginia and the City of Falls Church service area in Northern Virginia.

It is a federal entity that is part of the U. S. Army Corps of Engineers (Baltimore District).

The provisions of the Safe Drinking Water Act and its associated regulations are the basis for all operations concerning the production, storage, and transmission of the drinking water produced and sold by Washington Aqueduct to its wholesale customers. We are regulated by Region 3 of the United States Environmental Protection Agency.

The Potomac River is the source of all water treated by Washington Aqueduct at its Dalecarlia and McMillan water treatment plants. The treatment consists of chemically induced sedimentation using aluminum sulfate as the coagulant; filtration in dual media sand and anthracite coal filters; and disinfection using chlorine as the primary disinfectant and chloramines as a secondary disinfectant.

The primary objective of the treatment process is to produce and deliver water to the tap that is free of contaminants and is pleasant to drink.

Washington Aqueduct's financial and strategic planning is governed by a Wholesale Customer Board comprised of the general manager of the District of Columbia Water and Sewer Authority, the Arlington County manager, and the City of Falls Church city manager. There are technical committees that meet to evaluate engineering and financial operations throughout the year.

All funds to pay for Washington Aqueduct operations and for capital improvements come from its three wholesale customers. There are no appropriated funds used to carry out our mission.

Washington Aqueduct meets all elements of all regulations that govern water quality as well as other environmental statutes.

In the sections that follow, I will provide information on Washington Aqueduct operations, but I believe this will be of interest to the Subcommittee as you think about DC WASA's role as the retail provider – and as a member of the board that makes strategic decisions concerning Washington Aqueduct activities and provides its share of the funds for Washington Aqueduct's operations.

Developments in Drinking Water Quality

Drinking water treatment has steadily improved over the last 150 years to incorporate new technology and processes in order to protect the public health. The greatest single advance in that period has been the use of chlorine to disinfect the water to kill the microbial organisms that plagued earlier societies with illness and death.

As human activity increases in the watersheds that supply source water, a range of new challenges beyond just the biological has emerged and more challenges are on the horizon. Tailoring the water treatment techniques to meet these challenges is the responsibility of the public water utilities.

Washington Aqueduct's treatment plants employ multiple barriers to remove physical, chemical and biological contamination. However, as the potential contaminants become more complex and the ability to detect them at extremely low levels advances, we must continue to evaluate whether changes in treatment are warranted to meet Federal public health standards.

Washington Aqueduct will work with its neighboring utilities, Fairfax Water and Washington Suburban Sanitary Commission to sample our mutual source and our individual finished waters for the most likely endocrine disruptor chemicals including pharmaceuticals. Additionally, Washington Aqueduct is preparing a scope of work for a consultant to work with us to develop a framework in which to make decisions for possible future changes to the current treatment process. A wide range of concerns will be addressed including improved disinfection byproduct precursor removal, improved removal/inactivation of pathogens, treatment of emerging contaminants and improved taste and odor. If treatment changes are indicated to meet future water treatment

challenges and potential regulatory changes, techniques such as ozonation and ultraviolet light disinfection are among those that will logically be considered as additive to the current treatment techniques. As we do this, all of the secondary effects of any change in treatment will be considered.

Once the water leaves the water treatment plants and enters the distribution system there are challenges there as well. While Washington Aqueduct is not responsible for the management of the pipes per se, it is responsible to deliver water with the proper chemistry to ensure that it remains free of contaminants all the way to the glass the customer holds in his or her hand.

The two major issues in the distribution systems are lead (in the form of pipes, solder and fixtures) and the chemical byproducts of disinfection. Water treatment techniques and chemistry are capable of dealing with both.

Washington Aqueduct and DC WASA work collaboratively to lower the likelihood of lead leaching into the water from lead pipes serving some homes in the District of Columbia. The addition of orthophosphate as a corrosion inhibitor in the fall of 2004 is proving to be very effective in reducing the amount of lead that might leach into water in these homes.

The use of chloramine as a secondary disinfectant has significantly reduced the concentrations of the regulated disinfection byproducts trihalomethanes and haloacetic acid. The current treatment is effective.

One project, on which construction will begin in the fall of this year, is the conversion of the physical form of the chlorine used for disinfection from pure gaseous chlorine to an aqueous solution known as sodium hypochlorite. This change will be unnoticeable in the water leaving the treatment plants, but it will eliminate the danger of any accidental or purposeful release of chlorine gas – and it will be safer to transport from the manufacturer to the treatment plants.

Through the course of normal human development and activity, there have always been effects of that activity on drinking water. I am confident that the water treatment industry in general and Washington Aqueduct specifically will meet this challenge and always be ready to deliver safe drinking water to the customers.

Capital Improvement Program

Washington Aqueduct's capital improvement program is designed to accomplish three things: revitalization of existing infrastructure, incorporation of new processes that can improve efficiency or efficacy of the operations, and meeting new or anticipated regulatory changes that require upgrades to the treatment process.

The DC WASA share of the Washington Aqueduct capital improvement budget is carried in the DC WASA capital improvement plan.

Since 1996, Washington Aqueduct customers have approved funding of $257,880,000 to make significant improvements in the reliability and capability of Washington Aqueduct infrastructure and treatment processes. The results over that period represent extraordinary teamwork between Washington Aqueduct and DC WASA as well as its Arlington and Falls Church customers.

DC WASA supports the Washington Aqueduct goal of providing safe, reliable, and cost effective water service. While DC WASA itself has great needs for capital improvement projects to meet its water system and wastewater system obligations to customers and regulators, it has recognized that the Washington Aqueduct's needs must be incorporated in their plan if we, as a wholesale/retail team, are to be successful in meeting the expectations of the District of Columbia customers.

Should there be a need for additional treatment techniques (e.g., ozonation, ultraviolet disinfection, etc.) we will work with DC WASA to program and execute these projects in addition to the baseline revitalization needed to sustain the infrastructure. All of this is being done to protect the consumer and the environment.

Environmental Protection

DC WASA and Washington Aqueduct are committed to meeting our obligations under environmental law and to establish best practices to ensure long-term capabilities to operate industrial activities in urban areas.

In March of this year, Baltimore District, US Army Corps of Engineers on behalf of Washington Aqueduct awarded a major construction project that will recover the water treatment residuals that are generated as sediment is removed from the Potomac River water in the treatment plants. Instead of being returned to the Potomac River that material will be dewatered and hauled for land application – essentially recycling the sediment back to the upland areas.

In the day to day operations at the Washington Aqueduct water treatment plants and its appurtenant facilities, we ensure that air and water quality are not diminished and that solid wastes are transported to appropriate disposal facilities.

To this end, Washington Aqueduct works with the District of Columbia Department of Environment and the Maryland Departments of Environment and Natural Resources. Storm water permits and National Pollutant Discharge Elimination System permits are carefully managed.

This careful management and coordination occurs at both ends of our and DC WASA's mutual systems. For example, the decision to handle water treatment residuals on site at the Washington Aqueduct's Dalecarlia facility was arrived at after considering a range of alternatives, one of which was to put these residuals into the sewer and have them processed at the Blue Plains Advanced Wastewater Treatment

Plant. We worked with DC WASA and in the end we determined that this idea was not feasible because our inorganic solids would have disrupted the significant advances being made by DC WASA to reduce the quantities and impacts of their primarily organic solids that the Blue Plains plant receives for processing.

Agency Governance

As you think about DC WASA governance issues, it might be helpful if I take a moment to review the history of the Washington Aqueduct governance since it is entwined with the creation of DC WASA.

In 1995 and 1996 there was a detailed analysis of the role the U.S. Army Corps of Engineers should play in continuing to provide (via the Washington Aqueduct organization) potable water to the District of Columbia, Arlington County and the City of Falls Church service area. This analysis was directed by the Congress in the Safe Drinking Water Act Amendments of 1996.

After deliberation and analysis of alternative arrangements including privatization and creation of a new regional authority, the recommendation of the District of Columbia, Arlington County and the City of Falls Church to the Chief of Engineers acting for the Secretary of the Army, was to maintain the Washington Aqueduct as the wholesale water provider, but to provide a structure for budget-related decision-making.

The decision to accept that recommendation was recorded in a Memorandum of Understanding that laid out a procedure for the three wholesale customers to act on budgets developed by the general manager of Washington Aqueduct.

The position designated to serve as the Washington Aqueduct Wholesale Customer board principal representing the interests of the water customers in the District of Columbia was the General Manager of DC WASA.

The logic of selecting DC WASA's General Manager as the principal representing the District of Columbia service area, was that the water sales agreement for the water provided to the District of Columbia geographic service area was between Washington Aqueduct and DC WASA. Therefore DC WASA had the financial responsibility to meet its obligations under the sales agreement and, as such, the Washington Aqueduct's costs would be included in the DC WASA budget. That DC WASA budget is then approved according to the procedures established for the DC WASA Board.

In Virginia, the county and city agencies responsible for water service put the Washington Aqueduct costs into their utility budgets that are subsequently presented for review and approval in accordance with the county and city procedures.

In all three instances, the Washington Aqueduct Wholesale Customer Board principals report to the board or council that must approve their budgets and be

responsible for setting the rates and charges to generate the revenue to support the approved Washington Aqueduct budget.

Throughout a period of increased security needs and with the occasional need to address specific problems, this arrangement has served all parties very well. There has been excellent progress in making operational as well as capital improvements that have resulted in a continuing supply of safe, reliable and cost effective drinking water to the residents of the District of Columbia and Arlington County and the City of Falls Church service area.

I believe it is an appropriate business model that will continue to serve us well in the future.

Thank you again for the opportunity to participate in today's hearing. I will be happy to answer your questions.

Mr. DAVIS OF ILLINOIS. Thank you, Mr. Jacobus.

We will now proceed to Mr. Siglin.

STATEMENT OF DOUG SIGLIN

Mr. SIGLIN. Thank you, Chairman Davis, Congresswoman Norton, Congressman Van Hollen.

Mr. Chairman, my name is Doug Siglin. I am the Federal Affairs director for the Chesapeake Bay Foundation, and on behalf of our 200,000 members I thank you for the opportunity to be here today.

You have my written statement. I am going to try to just summarize briefly the four points that I want to make here.

First is that D.C. WASA, through its Blue Plains Wastewater Treatment Plant, is absolutely critical to the health of the Chesapeake Bay. I use a little fact in the testimony that Jerry Johnson provided for me, that if you took the daily flow from the Blue Plains Advanced Wastewater Treatment Plant and put it in gallon milk jugs in 1 day and line those milk jugs up side by side, it would go around the earth one and a half times. That is to say that it is an enormous contributor of water to the Chesapeake Bay.

The concentration levels of nitrogen in the water that is discharged from the Blue Plains plant is enormously important. As Mr. Capacasa just said, it is the largest source of nutrients to the Chesapeake Bay that we have in our 64,000 mile watershed. That is to say what Blue Plains does is extremely important.

The Chesapeake Bay is suffering from an overload of nitrogen, which causes a deficit of dissolved oxygen in the water. We call these dead zones. It is the same kind of dead zone that is in the Gulf of Mexico. In fact, EPA tells us there are 44 estuaries and coastal areas in the United States now that are suffering from these kinds of dead zones.

There are scientists who believe that the overload of nitrogen in our water is equal on an ecological perspective to an excess of greenhouse gases in the atmosphere causing climate change. It is a worldwide problem of huge magnitude.

The challenge that we have before us is how do we address that in the Chesapeake Bay. Since the Chesapeake Bay 2000 Agreement, there has been a regional process that has involved the District of Columbia, the State of Maryland, the State of Virginia, the State of Pennsylvania, and what we call our watershed headwater States, New York, Delaware, and West Virginia, to make allocations of reductions of nitrogen throughout the entire watershed. The scientists tell us that we can have no more than 175 million pounds of nitrogen in the bay to have it healthy. We have far more than that now. In order to get to 175 million pounds we have to make reductions.

There was a very complex, multi-year process to create those allocations. Blue Plains was given an allocation. Blue Plains, the WASA management, has challenged the allocation from the time that EPA first offered its draft permit in 2006 and has, once again, challenged the allocation at the Environmental Appeals Board on April 1st.

It is true, and I want to acknowledge the fact that they are moving ahead with plans, but at the same time they are moving ahead with plans to meet the allocation, they are challenging it legally.

They are on a two-track strategy. I ask you what is going to happen if, in fact, the two-track strategy succeeds and the allocation is, in fact, rejected. That means that we are going to have to go back and reconsider that lengthy process that led to the allocation that Blue Plains has. That means that the State of Maryland and the State of Virginia are going to have to reconsider their allocations. And I would submit to you that is going to be more delay and a much longer time before we can actually get to the place where the bay is clean and healthy again.

Finally, Ms. Norton, you know that I have been working with you since the year 2003, and with the appropriators, to get Federal appropriations for WASA. We have been quite successful. Because of your good work and the good work of the appropriators, we have been quite successful in that. I want to continue to work with that to get appropriations for D.C. WASA and the Blue Plains Treatment Plant. It is absolutely essential that the Federal Government do that.

But what I want to do today is propose the notion that the management of WASA should voluntarily try to get past the legal minimum which is being assigned to it by this long, complicated process and EPA permit, to voluntarily go beyond, to try to get more nitrogen out of the system so that we can save the Chesapeake Bay, if you will, faster, and in return for that commitment, then it seems to me that all of us the region—Maryland, Virginia, Pennsylvania, Delaware, West Virginia, and New York—would owe an obligation and that we all should work together to find the sources of financing that are going to make that possible.

Thank you for your time.

[The prepared statement of Mr. Siglin follows:]

Statement of Douglas Siglin
Director of Federal Affairs, Chesapeake Bay Foundation
Oversight hearing on the DC Water and Sewer Authority
Subcommittee on Federal Workforce, Postal Service,
and the District of Columbia
House Committee on Government Oversight and Government Reform
April 15, 2008

Mr. Chairman and members of the subcommittee, thank you for inviting me here today to offer my thoughts on the role that the DC Water and Sewer Authority's Blue Plains Advanced Wastewater Treatment Plant plays in protecting the region's environmental health. I do so on behalf of our nearly 200,000 members living in all 50 states and many countries around the world.

I understand that much of today's hearing is dedicated to WASA management issues, but I ask you to join me for these few minutes in looking at the much bigger picture of how WASA and its operations affect the health and economy of our entire region.

It is easy, but ultimately wrong, to perceive that WASA and its operations should only be of concern to the residents of the District of Columbia, or a bit more broadly, to concern to the residents of the District and parts of northern Virginia and the Maryland suburbs. If I don't accomplish anything else here, today, I want you to fully appreciate that WASA, through its Blue Plains wastewater treatment plant, has a very significant effect on the health of the Chesapeake Bay, and through that, on the nearly 17 million people who live in the Chesapeake Bay watershed.

This is far more than a rhetorical point. The Blue Plains Advanced Wastewater Treatment Plant is the largest advanced wastewater treatment plant in the world. It has a design capacity of 370 million gallons of wastewater a day and an average actual flow of about 330 million gallons a day. To get some idea of this volume, if the plant's daily design capacity were bottled in one gallon milk jugs and placed side by

side, they world circle the earth nearly one and a half times. Blue Plains is more than twice the size of the next largest municipal wastewater treatment plant in this region (Baltimore's Back River Wastewater Treatment Plant), and is roughly equal to the size of the next six largest municipal wastewater treatment plants in the Chesapeake Bay region combined.

The principal reason that the processing volume of the Blue Plains treatment plant is important to understand is this: despite past efforts to control it, the plant continues to discharge unacceptably high concentrations of one particular form of harmful pollution – nitrogen - into the Potomac.

The nitrogen concentration discharged by Blue Plains is critical because excess nitrogen is far and away the biggest pollution problem that the Chesapeake Bay has. Because of too much nitrogen, each year there are large areas in the Bay and its tidal tributaries where there simply isn't enough oxygen in the water to allow fish and shellfish to live. The common and very descriptive name for these areas is "dead zones", and they are a result of the process of nutrient over-enrichment of water called eutrophication. Dead zones are a natural result of the water being overloaded with too many nutrients – predominantly nitrogen and phosphorus – causing algae to multiply rapidly, which then causes a depletion of dissolved oxygen in the lower parts of the water column when they die and are consumed by bacteria. You are familiar with the green algal blooms in the Chesapeake Bay and on the tidal Potomac and other rivers in the warm months. Sometimes, in parts of the Bay's waters, we see consequential fish kills and "crab jubilees" due to the lack of oxygen.

The just-released report of the Chesapeake Bay Program confirms that 88 percent of the Chesapeake Bay and its tidal tributaries did not meet water quality standards for dissolved oxygen during the 2005 to 2007 monitoring period. This is sharply down from the 72 percent meeting such standards during the 2004-2006 period. Some of the decline can be attributed to annual weather variations, but the trend in recent years is strongly in the wrong direction.

This is the same Chesapeake Bay that conservative President Ronald Reagan called a "special national resource" in his 1984 State of the Union address and Congress recognized as a "national treasure and a resource of worldwide significance" in 2000.

It is worth noting that the problem of excess nitrogen flowing into coastal waters and reducing the amount of dissolved oxygen is not confined to the Chesapeake Bay. According to the EPA, 44 estuaries along the nation's coasts are highly eutrophic, and an additional 40 estuaries have moderate levels of eutrophic conditions. In our country, the annual dead zone in the Gulf of Mexico varies in size, but it recent years it has commonly exceeded the size of several small U.S. states. Worldwide surveys compiled by the World Resources Institute have identified 415 coastal bays and estuaries experiencing some form of eutrophication. Analysis of the WRI surveys shows that an incredible 78% of assessed continental US coastal area and 65% of Europe Atlantic coast are experiencing symptoms of eutrophication. There are scientists who believe that eutrophication in estuaries and other coastal areas are a human-induced global environmental phenomenon that rivals global warming in its impact on ecosystems.

Moreover, the inevitability of warming air and water temperatures will make the challenge of dead zones around the world even worse.

With specific reference to the Chesapeake Bay, it is clear that water temperatures in the Bay and water levels will continue to rise for many years, exacerbating the dead zone problem while at the same time inundating nitrogen-removing coastal wetlands. In a statement to the Senate Environment and Public Works Committee last fall, Donald F. Boesch, the President of the University of Maryland Center for Environmental Science and perhaps the preeminent scientist focused today on understanding the Bay, strongly argued that the coming effects of global climate change be "factored into restoration goals and actions" now, before it is too late.

Even as everyone understands the pressing need to reduce nitrogen pollution in the Chesapeake Bay watershed, the task of how to actually do it will require investments and changes across the watershed's 64,000 square miles. Six states and the District of Columbia directly contribute nitrogen pollution to the Chesapeake Bay through the Bay's extensive network of rivers and streams. The nitrogen pollution comes from many sources, with runoff from farms and suburbia, air pollution, and inadequate human and animal sewage treatment being the most prominent among them. We need to reduce nitrogen pollution from all of these sources as far as we can manage to do so. According to pollution models and monitoring, inadequate point-source treatment, largely human sewage treatment wastewater, accounts for about one-fifth of the nitrogen pollution, with urban and suburban storm water runoff

(some of which is also treated by the Blue Plains operation) accounting for about 10% more.

In the late 1990s, the Chesapeake Bay was formally listed as "impaired" due to excessive nitrogen, phosphorus and sediment pollution levels under the Clean Water Act, in which, incidentally, Congress committed to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters". In June of 2000, the EPA, the District of Columbia, and the states of Maryland, Virginia, and Pennsylvania signed the Chesapeake 2000 Agreement, or C2K, which made the following commitments:

- By 2010, correct the nutrient- and sediment-related problems in the Chesapeake Bay and its tidal tributaries sufficiently to remove the Bay and the tidal portions of its tributaries from the list of impaired waters under the Clean Water Act. In order to achieve this:

- By 2001, define the water quality conditions necessary to protect aquatic living resources and then assign load reductions for nitrogen and phosphorus to each major tributary;

- Using a process parallel to that established for nutrients, determine the sediment load reductions necessary to achieve the water quality conditions that protect aquatic living resources, and assign load reductions for sediment to each major tributary by 2001;

- By 2002, complete a public process to develop and begin implementation of revised Tributary Strategies to achieve and maintain the assigned loading goals;

- By 2003, the jurisdictions with tidal waters will use their best efforts to adopt new or revised water quality standards consistent with the defined water quality conditions. Once adopted by the jurisdictions, the Environmental Protection Agency will work expeditiously to review the new or revised standards, which will then be used as the basis for removing the Bay and its tidal rivers from the list of impaired waters;

- (each signatory will...) ensure that all properties owned, managed or leased by the signatories are developed, redeveloped and used in a

manner consistent with all relevant goals, commitments and guidance of this Agreement.

The commitments of the C2K Agreement drove representatives of the Environmental Protection Agency, the District of Columbia, Maryland, Virginia, and Pennsylvania, with cooperation from the Bay's so-called "headwater states" (New York, Delaware, and West Virginia) to work together and determine that the Bay could handle no more than 175 million pounds of nitrogen pollution on an annual basis; this equated to a reduction of 110 million pounds of nitrogen pollution each year from the estimated levels the Bay was receiving in 2000. The state partners, the District, and the EPA cooperatively allocated this 110 million pound reduction among themselves, based on the best science available, and developed plans and changes necessary to achieve the 110 nitrogen pollution reduction by 2010. Under this cooperative agreement, WASA's obligation is to put systems in place that will lower nitrogen pollution concentrations and loadings to no more than 4.689 million pounds annually. Reductions in nitrogen pollution from sewage treatment plants, and incorporation of those reductions into Clean Water Act wastewater discharge permits know as National Pollutant Discharge Elimination System, or NPDES, permits, is a major element of C2K implementation.

Unfortunately, scientists are now projecting that we will not reach nitrogen reduction goal by the 2010 deadline. WASA provides a case study in why we are failing to achieve that goal. Rather than accepting it as the result of a detailed, legitimate regional process, WASA continues to pursue legal strategies to try to avoid its ecological and legal obligations. Its arguments were rejected twice by EPA regulators and unanimously rejected last month by the EPA's Environmental Appeals Board. However, WASA continues to pursue its protest, filing yet another legal appeal on April first, which seems to me to have been a particularly appropriate day to suggest that the nearly decade-long exercise in regional cooperation shouldn't be considered binding.

It is hard to escape the conclusion that WASA's ongoing effort to evade its responsibilities under the cooperative regional process is a failure of both the well-meaning process itself and of the organization's governance, which consists of directors from the very jurisdictions that committed in the C2K agreement to achieving the nitrogen pollution reduction goal and implementing technologies, funding, and other tools to reach the agreement's goals and objectives.

Perhaps even more importantly, if WASA were to win its latest appeal and convince the EPA Environmental Appeals Board to reconsider its rejection of WASA's earlier arguments, it would be a truly pyrrhic victory – a setback in this case to the very people whom WASA serves, particularly in the suburban jurisdictions of Maryland and Virginia. Such a victory would not only have the effect of forcing Maryland and Virginia to reconsider their nitrogen pollution reduction plans but also result in yet more delay towards reducing our dead zones and restoring the Chesapeake Bay.

It would seem to me that those of you with an interest in WASA's regional governance would see this as at least as big a matter as the issue of management reporting relationships. Nearly 17 million persons in this region have a stake in making sure that WASA meets its nitrogen pollution reduction goal, that the cooperative process that led to that goal is respected, and that the entities responsible for implementing it, as well as those responsible for the oversight of that implementation, move with dispatch to accomplish implementation in the shortest possible time.

At the risk of veering off here into political naiveté, I'm going to suggest that there is a better way that this process can be managed.

To begin, this committee should encourage the WASA management to drop its ongoing effort to overturn its nitrogen allocation and pursue a more cooperative regional approach to reducing the Blue Plains treatment plant's nitrogen concentrations and funding the necessary capital investments.

I suggest that such a regional cooperative approach needs to start with the WASA management voluntarily agreeing to do <u>better</u> than the required 4.7 million pound annual nitrogen load limit, bringing its concentrations to as near to zero as practical. To voluntarily do better than the minimum required by law would create an example for the nation appropriate for the world's largest advance wastewater treatment plant located in the capital city of the United States.

A second step would be a broad regional acknowledgement that WASA's funding baseline is the ratepayers of the District of Columbia, where one in three working families is poor, according to a just-released study. A regional approach needs to be developed to ensure that the burden of upgrading the Blue Plains plant beyond what is required by law doesn't fall disproportionately on these families.

Unlike the suburban jurisdictions in Virginia and Maryland that participate in WASA's operations and governance, there is no state fund for the District to assist ratepayers in carrying the costs of the upgrade.

What is needed here is a true partnership among the District, the federal government, and the other jurisdictions to meet the costs involved. What is needed is shared leadership to achieve a shared goal - a recognition of the value to the region, the nation, and the world that a fully restored Chesapeake Bay will once again provide.

WASA could contribute to such a partnership by developing and instituting a rate scheme that takes ability to pay into consideration, as was suggested by the EPA in 2002. The District could contribute by creating a more generous program of water and sewer rate subsidies for those who would still struggle under a revised rate structure. The suburban jurisdictions and their states could consider how they could help more, particularly given that the Bay will recover faster if Blue Plains takes more aggressive action to limit nitrogen that what it has been allocated. And, perhaps most importantly, this committee could become a partner in the process, taking the lead in encouraging the development of a regional deal that included substantial assistance from the federal government.

400 years ago this summer Captain John Smith and a handful of his fellow Jamestown colonists undertook an historic journey in a small boat all around the shores, inlets, and rivers of the Chesapeake Bay. What they beheld with great wonder was perhaps the most biologically productive body of water on the planet. Today, because of human activity, much of the volume of the Chesapeake Bay is a dead zone, devoid of the fish and shellfish that characterized the Bay for thousands of years. The responsibility lies with all of us whose instincts are to adhere to a narrow view of self-interest, counting our coins and questioning our common obligations. We all need to try to avoid being the cynics that Oscar Wilde warned us about, knowing the world's costs but not its values.

Mr. Chairman, we can only address our regional water quality challenges on a regional basis, and the Blue Plains Advanced Wastewater Treatment Plant is a significant part of that challenge. I urge your committee to continue to be involved in helping to protect and define that regional basis, so that we together will be able to give our grandchildren and their grandchildren the gift of a healthy, restored, and productive Chesapeake Bay.

Mr. DAVIS OF ILLINOIS. Thank you very much.

We will go to Mr. Boone.

STATEMENT OF ROBERT BOONE

Mr. BOONE. Thank you, Chairman Davis, Ms. Norton, Mr. Van Hollen. I truly appreciate this opportunity to speak with you today and share the point of view of the Anacostia Watershed Society. We have been observing the performance of the discharge of sewage in the watershed since 1989, and it was sad but we had to file a lawsuit to get the attention of WASA to stop discharging sewage into the Anacostia.

We have a vision for a swimmable and fishable river by—well, we started out with the year 2000, and we are slipping now to 2010. We don't want to slip much more than that. It is pleasant outside today, but 3 months from now it would be very appropriate to see kids and myself, too, probably out refreshing and enjoying the river swimming in it. So we hope to meet that clean water mandate of a swimmable Anacostia River, but to do that we are going to have to get the sewage out of the water.

I am very glad to say we have been a great supporter of WASA. You know, we don't realize it, but this is the largest wastewater treatment plant in the world, and that is words, but accomplishing that is another story. We look to WASA to solve our problem. If we can get the sewage out of the water, we can have a swimmable river, but not until we do that.

I must say that I have been told today by Mr. Johnson that 40 percent of that 100 years of dumping sewage in the water, 40 percent of that will be stopped coming September of this year. That is cause for celebration right there, I must say. The ecology of the water will profoundly change with 40 percent less sewage going into it. Not swimmable yet, but much better off.

We are very concerned about the pharmaceuticals and the endocrine disrupters that are ongoing now. We are finding out more about those, and it is getting to be very scary, quite frankly. We would like to see a lot more energy focused on the removal of nitrogen, but also pharmaceuticals and endocrine disrupters.

There is another issue about transparency. You know, with transparency within WASA's process it would eliminate a lot of the paranoia and a lot of the scandals and so forth that are going around. I think more effort in being transparent would effectively put forward WASA's effectiveness that people don't know about at this time.

It is a regional burden that WASA bears, and it should be a regional solution, and a transparent regional solution. One puzzling problem I have right now is this impervious surface tax that we strongly support, but I understand that the District government is also proposing an impervious surface tax, and so we have two proposals floating around. You know, a ratepayer receiving two bills about impervious surface is going to give impervious surface a bad name, so we need to have one combined or worked out solution to the impervious surface, because the impervious surfaces are creating the stormwater that is the major problem with the Anacostia River water quality.

That is all I have to say. It is getting late. I thank you for this opportunity.

[The prepared statement of Mr. Boone follows:]

START THE ANACOSTIA RESTORATION TODAY

Anacostia Watershed Society

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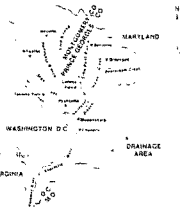

Testimony of Robert E. Boone, President, Anacostia Watershed Society
Before the Congress of the United States
House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service and the District of Columbia

April 15, 2008

Dear Chairman Davis and Members of the Subcommittee;

Thank you for this opportunity to speak before you today regarding the District of Columbia Water and Sewer Authority (WASA). My name is Robert Boone, and I am the President and Founder of the Anacostia Watershed Society (AWS), a non-profit environmental organization that is working to restore the Anacostia River to a swimmable and fishable condition. The Anacostia River flows from Maryland's Montgomery and Prince George's Counties, into the District of Columbia, where it then joins the Potomac River, and ultimately, the Chesapeake Bay.

As an urban river, the Anacostia is faced with many pressures and pollutants as a result of its highly developed and urbanized watershed. One of the main impacts is the pollution from the input of human sewage into the river during rainstorms. In the District of Columbia, a combined sewer system serves roughly one third of the city, and it carries both sanitary sewage and stormwater runoff through a network of underground pipes. During a rainstorm of approximately one inch or more, this system is quickly overwhelmed by increased stormwater volume, and as a result discharges its contents, as it was originally designed to do, into the Anacostia and Potomac Rivers, as well as Rock Creek. This event is known as a combined sewer overflow, or CSO. In the Anacostia River alone, over two billion gallons of stormwater mixed with raw sewage overflow into its waters every year. An additional one billion gallons enters into the Potomac River and Rock Creek annually. This is a serious water quality impact, as well as a potential human health impact due to the dangerous bacteria and pathogens found in raw sewage. Ultimately, all of this pollution ends up in the Chesapeake Bay, adding further burden to this already overstressed estuary.

The District of Columbia Water and Sewer Authority (WASA) is a major stakeholder in the quality of life of our area residents as well as in the restoration of the Anacostia River, Potomac River and Chesapeake Bay. WASA provides all of the drinking water and wastewater sewer services in the District of Columbia, including responsibility for the combined sewers. WASA also operates the Blue Plains Wastewater Treatment Plant, a regional facility which receives and treats wastewater from the District of Columbia, as well as from Montgomery and Prince George's Counties in Maryland, and from portions of Fairfax and Loudon Counties in Virginia.

WASA is currently working to implement its Long Term Control Plan (LTCP), which is a multi-year effort to address the problem of combined sewer overflows into our area waterways. The plan calls for the construction of large underground storage tunnels beneath the city. These would be similar in size

to the tunnels which carry Metrorail train cars throughout our region. They would function as temporary holding tanks for the CSO's after a rainstorm causes an overflow and would prevent this effluent from contaminating our waterways.

The estimated cost for constructing these tunnels is now over two billion dollars, and the timeline for completion has been stretched to 2025. WASA is faced with the challenge of funding such an enormous capital project, without the prospect of large sources of outside cash. As a result, these costs will be assigned to the WASA ratepayers who use the sewer system. While this might sound like a logical solution, a critical ratepayer is missing from this scenario, and that is the Federal Government.

Washington, DC is unique to other cities in that it has an enormous federal infrastructure in order to support the workings of our nation's government. A huge part of this infrastructure is all of the toilets and sinks which are found in the federal government's buildings, and which discharge their wastewater into the WASA combined sewer system. It is estimated the approximately 40% of the volume in the CSO system can be attributed to the federal government infrastructure in Washington, DC.

I am very pleased that your committee is holding this hearing, and I strongly believe that this presents an opportunity for Congress to step forward and assist in the restoration of our nation's waterways. A commitment of federal funding is needed to pay for WASA's Long Term Control Plan. To date, federal payments have helped to address some of WASA's shorter term needs, but there has been no commitment for the much larger sum of money that will be needed to fix WASA's CSO problem by paying for the Long Term Control Plan. I believe that Congress has a responsibility to pay its fair share of the cost of this project due to the enormous contribution of effluent contributed by the federal infrastructure every year.

I urge the delegations from Maryland and Virginia to work with the District of Columbia on securing federal appropriations for the repair of the combined sewer system. This will result in a remarkable improvement in water quality in the Anacostia and Potomac Rivers as well as the Chesapeake Bay. Millions of dollars have been spent on the restoration of these waterways, and to allow the impact of this pollution to foul our waters for another two decades would negate much of the progress that has been made to date, and would devalue the investment and heart commitment that has been put into restoring these waterways by so many agencies and organizations.

I urge all members of Congress to see the urgent need to take responsibility for the federal city, and for the polluting impact that it is having on the waters of the United States. Blue Plains is the largest advanced wastewater treatment plant in the world, and we should be working to improve it, and to make it a model for how all wastewater treatment plants should operate. Federal funding could be used to upgrade the capacity for Blue Plains to remove greater levels of nutrients such as phosphorous and nitrogen, pharmaceuticals, and other pollutants that are still plaguing the Chesapeake Bay. As the nation's largest estuary, which provides so many vital services to our planet, the Chesapeake Bay is truly a national treasure. We cannot allow pollution from our sewer systems to continually degrade this resource. The opportunity stands before Congress to honor the spirit of the Clean Water Act, and take responsibility for reversing years and years of pollution impacts into our nation's waters by funding the retrofit of WASA's combined sewer system, and by funding improvements to the regional Blue Plains wastewater treatment plant. It is our responsibility as stewards of the planet for our future generations.

Thank you for this opportunity to speak with you today.

Mr. DAVIS OF ILLINOIS. Well, thank you very much. I want to thank all of you gentlemen for being here with us.

Mr. Capacasa, in reference to the amended Clean Water Act permit EPA issued to WASA last year to incorporate new limits for nutrient reduction to the Potomac River and Chesapeake Bay, in your opinion, what are possible and achievable solutions or ways to bring the Blue Plains Wastewater Treatment Plant into compliance with the updated standards?

Mr. CAPACASA. Well, Mr. Chairman, WASA has already submitted a plan to us to achieve the job. It is a very innovative plan, very creative plan which merges two goals in one, one of reducing overflows to the rivers, and one of total nitrogen reduction. So that plan has been submitted to us. We have commended it greatly and I think the job right now is getting on with the work of implementing a plan. I heard Mr. Johnson today committing to basically take the next steps to implementation. It will take until 2014 to complete the job because of the magnitude of the upgrade, but it will be a vitally important milestone to complete in the Chesapeake Bay restoration when it is done.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Jacobus, given the role of the Washington Aqueduct in ensuring the public's safe drinking water and recent concerns raised about trace amounts of pharmaceuticals, what are the Aqueduct's long-term plan for continually upgrading or improving the quality of the District's water supply to stay ahead of new industry standard regulations?

Mr. JACOBUS. Yes, Mr. Chairman, all water treatment plants look at their source water and design treatment that meets the needs to remove contaminants from the source water. We do that right now. In the future, as we look at contaminants such as endocrine disrupting compounds, pharmaceuticals being one of them, and if we can't find better ways to keep them out of the water and if we find that their levels are increasing to a point that treatment is required, then we will certainly be in a position to employ treatment, because we are now initiating a study to look at alternative treatment sources, but it is based on what is the contaminant, what is an appropriate treatment, and then we have to then look at the cost and then the phasing in of that.

So we are going to continue to, starting now, with a new study looking at some of these emerging contaminants, to look at the long-term efficacy of our treatment plants to make sure that we will always be in compliance and that we will communicate with our customers and collaboratively deal with those we serve in the District of Columbia and our Virginia customers to make sure they understand what the potential risks are, what the potential treatment opportunities are, look at the costs and benefits of all of that, and we will work together to make a decision to make these capital investments.

But it will be science-based, it will be risk based, and it will also be best practices, and we are committed to a process to determine that which will give us a suite of options. We will select from among those and do the projects that will be required to keep the drinking water safe into the future as contaminants continue to get into the watershed from other human activity.

Mr. DAVIS OF ILLINOIS. Well, gentlemen, thank you very much. I am going to go to Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. A few quick questions. If I can just get direct answers, I think we will be fine.

Mr. Jacobus, you heard my concern and my understanding that there are competing priorities when, for example, Washington has to decide where to spend the money, if it is lead pipe, partial lead pipe replacement, and the alternative, orthophosphate.

Now, the District has a lot of experience of others on which to rely. When can you tell us it will be appropriate to rely on orthophosphate or not in this particular jurisdiction?

Mr. JACOBUS. I think the orthophosphate has shown, since its induction into the system and introduction in 2004, that it is working well, and that it has brought the levels of lead—remember, the lead comes from the lead service line pipes, and so as the water sits in those pipes it tends to leach it out. The orthophosphate puts a barrier on the inside or the pipe. That is working, and the demonstration that it is working effectively are the results that are being shown in the last several cycles of the testing.

Ms. NORTON. You think it has already been definitively proved?

Mr. JACOBUS. I think it has been very effective and it is properly protecting the citizens, as it was intended to do, and the test results show that.

Ms. NORTON. Given the cost benefit issues that particularly you, Mr. Siglin and Mr. Boone know and worked so hard with me and other Members of the region to address, do you think the time has come to rely on this new approach rather than to put public money into the gold standard of replacement of the public portion, whether or not—I will make the question harder—whether or not the private party wants to do its share, as well.

Mr. JACOBUS. Looking at my responsibilities at the Aqueduct, ma'am——

Ms. NORTON. No, I am asking Mr. Siglin and Mr. Boone.

Mr. JACOBUS. I am sorry. Excuse me. I apologize.

Ms. NORTON. Given the competing priorities that they know very well, because they help me here as I try to get more money. They have heard the testimony. They have had to sit through this testimony. And they have heard me say we are on pay-go, and they have put in a lot of elbow grease. You have heard the testimony of Mr. Jacobus. You have heard testimony of GAO. You heard the testimony that other jurisdictions have even more definitively shown. In terms of the priority, do you think the priority should be in putting money, public money, into replacing the public portion of lead pipes in the District of Columbia.

Mr. SIGLIN. Congresswoman Norton, I have become an instant expert on orthophosphates over the last 2 hours.

Ms. NORTON. Last two what?

Mr. SIGLIN. Hours, sitting here in the hearing. Seriously, I can't make a judgment about lead pipes and the——

Ms. NORTON. That is not what I am asking you to make a judgment about. Others who have expertise, I am asking you about where the money ought to be spent.

Mr. SIGLIN. I understand.

Ms. NORTON. Do you think, if you had the choice to make that WASA should put the money into the public portion of lead pipes or should put the money into CSO or other parts of the system which are crying for money—I mean, somebody has to make that decision. I am pleased to make it; I am just looking for input from people who have credibility with us instead of simply making it. You heard the evidence. I tell you I go by the evidence.

Mr. SIGLIN. Congresswoman, I can only repeat back to you what I think I heard today. What I think I heard today is if you only replace the public portion of the lead pipes and not the private portion it is not going to be as effective as you want it to be. I think I also heard that the orthophosphate treatment has been working and that appears to be a possible solution. That is the sum of what I know about that particular aspect.

Ms. NORTON. To the extent of that evidence is not contradicted, you know, the reason I put you on record on this is everybody accuses my environmental friends of wanting to spend money whether or not, and I am just giving you the opportunity to say if you prove it, and we haven't heard evidence to the contrary, and you have huge priorities otherwise, you need to advise public officials because they have to make the decision. As far as I am concerned, you answered the question, but I am going to go on.

Maybe you can help me, Mr. Capacasa. I am trying to find out about all these. I asked our two prior witnesses about whether or not WASA is working at cross purposes with many of us who are trying to take nitrogen, eliminate nitrogen from the Anacostia and from the water, when they engage in attempts, protests, you set one standard, then there is a protest—and there is an appeal appearing right now, April 1st. His answer is, you know, we settled these things. Are you lowering the standard? If they are settling them, why aren't they settling them before protests and appeals happen?

Mr. CAPACASA. We believe, through the Chesapeake Bay program, the D.C. Mayor represents D.C. government and comes to the tale and makes agreements, and the allocation that we provided to D.c. was respective of the allocation that D.C. agreed to as part of the Chesapeake Bay Compact, if you will. So we do think it is an unnecessary delay and unnecessary challenge.

The process allows for parties to exercise their rights of appeal, and that is what we have.

Ms. NORTON. Do you think they are doing it because these are very costly? I mean, are they trying to save money, because they obviously don't have a lot of money.

Mr. CAPACASA. Well, certainly it is a large cost. I think they want to get it right because if they are going to be building cap facilities for $800 million they want to get it right. I just think we spent 10 pages in our response to comments explaining a rationale for the total nitrogen limit. We think it has been thoroughly vetted and explained and very transparent to those who want to know why it is what it is.

Ms. NORTON. When I heard something that apparently doesn't cost money, I think your testimony found that the Lead Copper Rule, that they were in compliance. The so-called dialectics where you had to wring out of WASA that they don't use dielectrics when

lead and copper pipes are joined. Should they be, particularly since it doesn't present a tremendous cost?

Mr. CAPACASA. Ms. Norton, e can share with you a report that is on the EPA Web site right now which looked at the specific issue of two different metal pipes joining each other in the D.C. water system. It is called galvanic corrosion. When the treatment process is working as good as it is now in D.C., this report determined that it was really a minimal benefit, a minimal effect to have this.

Ms. NORTON. So it is really not worth the cost? I am not trying to make anybody spend money.

Mr. CAPACASA. In our view it is a minimal benefit.

Ms. NORTON. How much does it cost?

Mr. CAPACASA. I can't speak to that. It may be minimal cost, but it is not——

Ms. NORTON. Would you provide that information to the committee within 30 days if you don't have it.

Mr. CAPACASA. Sure. We will share that report with you. Yes.

Ms. NORTON. If it is not necessary, it is not necessary.

Would you clear up this flushing problem for us. There is a lot of controversy about flushing by EPA. Now, EPA regulates the first draw of water samples, but we all know the second draw is equally, if not more, representative of how we operate, how people use water to cook and to drink. WASA seems to take advantage of the fact and has been accused of lots of flushing. The one that most disturbed me, Mr. Capacasa, was in 2007 when WASA instructed the D.C. public schools to flush every school for 45 minutes the night before sampling. Do you think that is appropriate?

Mr. CAPACASA. We do have protocols that apply to large buildings such as schools. The protocols are different between a residential sample method and larger buildings such as schools. The protocols do allow for the nightly——

Ms. NORTON. Forty-five minutes of flushing the night before the sampling?

Mr. CAPACASA. If it occurs the night before and the water stays stagnant for a period of 8 hours or more——

Ms. NORTON. So it is all right to flush the night before within the rules?

Mr. CAPACASA. Some flushing the night before is within the rules. I would be glad to share——

Ms. NORTON. Why did they flush? Wy do you think that they did flush? There may be some good reason for it.

Mr. CAPACASA. We can double check on that, but, like I said, we have provided the appropriate protocols to the D.C. school system for the sampling of the schools. Two rounds of sampling of the schools have occurred using an EPA protocol. I would be glad to share that with the committee.

Ms. NORTON. Excuse me, sir. How much flushing should occur before water at a school is sampled? What does the EPA require, if anything at all?

Mr. CAPACASA. I think we had a recommendation of shorter time perhaps, maybe 4 or 5 minutes, but I want to be sure about that before I definitively state that is the answer.

Ms. NORTON. You were clearly informed. I can't believe you were not informed of this. Is there anything that EPA can do about these flushing incidents?

Mr. CAPACASA. We have provided quite a bit——

Ms. NORTON. Which may give a completely false picture of whether or not thousands of people have contaminated water.

Mr. CAPACASA. I understand the concern, and certainly where school children are involved we want to make sure the best is done. We provide quite a bit of assistance to the D.C. school systems on sampling protocol, and EPA does——

Ms. NORTON. They were instructed. They were instructed by WASA, so I am not asking what they would do; I am asking, if WASA tells them flush this thing for 45 minutes and that is what they do, I guess, I am asking you if EPA monitors that in any way.

Mr. CAPACASA. It is an area of the law where we don't have any direct authority.

Ms. NORTON. So maybe Congress needs to give you some?

Mr. CAPACASA. Large buildings and schools are not within our direct authority under the Drinking Water Act. It is primarily water as distributed in the distribution system.

Ms. NORTON. As a matter of fact, you are right. That is why our bill, the bill with Chairman Waxman—and before this hearing I said to him that even if we do not proceed with the whole bill, with respect to the parts having to do with children and with schools, it seems to me we ought to pull that out and try to move it.

Mr. CAPACASA. Ms. Norton, we are going to be sponsoring a workshop this year for owners of large buildings within D.C. to make sure they understand the proper protocols for testing and maintenance of water quality in large institutions.

Ms. NORTON. Remember, I am dealing with the water guys, WASA, telling them to flush, so they would presume that it had your blessing and that it was appropriate scientifically.

I don't want to keep this panel. We have been here a long time. I am very concerned about what is beginning to come out on bottled water. It is a complete hazard to the environment, and now we are learning that some bottled water which people regularly drink while they are engaging in healthy activities, like water and running, may, because of the nature of the bottles—and there are some numbers, three, seven. I don't know which numbers are supposed to be worse than others.

Could I ask any of you, do you think it is appropriate for people to use bottled water, even in light of all you know about water and what we are trying to do to improve water here?

Mr. CAPACASA. I will just start by saying that the water is delivered to the tap.

Ms. NORTON. Excuse me?

Mr. CAPACASA. The water as delivered to the tap in the District meets all Federal health-based standards. I personally don't see——

Ms. NORTON. So it is not necessary?

Mr. CAPACASA. I personally don't see a need to——

Ms. NORTON. To use these bottles which they now tell us, themselves, may be contaminated with some harmful chemical? That would be your view, Mr. Jacobus?

Mr. JACOBUS. Congresswoman, I would like to say that I would like to come to the next hearing you hold and find a pitcher of water with ice and glasses on the table.

Ms. NORTON. You won't. This is what we use. I am asking you if this is what we should be using.

Mr. JACOBUS. But the thing is I don't think there is anything wrong with this water, but there is also——

Ms. NORTON. No, I am asking you whether there is anything wrong with this bottle.

Mr. JACOBUS. I suspect that concern is way overblown, but the fact that people are drinking bottled water in lieu of the city water that we have gone to all of the trouble and expense at the ratepayer' expense, and it is perfectly good to drink. The problem is not the water; the problem is the confidence that people have in their water.

We are, with your help and others within the District of Columbia government, we want to work harder to find a way to get people's confidence in our water supply so that they can go to the tap and take a drink of water. This bottle is 250 times more expensive than a glass of water drawn from the tap.

So while we are talking about raising water rates over here, on this hand people are buying water that is much more expensive than the cost they will incur with the increased rates. So we are working with D.C. WASA, with Jon, and everyone else. We, I believe, need to work in a way to restore the public confidence.

I am here to tell you that we at the Washington Aqueduct continue to have confidence in what we do and we want to work with our partners, because we deliver great water to all of our customers that is perfectly good to drink. The trouble is that people aren't convinced of that, and that is an area that we have to find the connection, because it is a public service that we offer and people are not getting the advantage of it.

Ms. NORTON. We have you at the same table with Mr. Siglin and Mr. Boone because of a seamlessness of our environmental concerns. Leave aside for a moment whether number three and seven—you have to look on here to find out which number. Leave that aside for the moment and let me ask both of you: should these containers be eliminated in light of where we know they end up?

Mr. BOONE. I will answer first. I think absolutely yes they should be eliminated. They end up in the Anacostia River. They end up in the ocean. There is research that has confirmed that plastic doesn't disappear. It breaks down into little pieces and it ends up in the food chain, becoming an endocrine disrupter. There has been considerable research about this done on the Pacific side of the United States. And so the plastic is persistent in our environment. It is all over the place.

But I must say, Congresswoman, by having it here, you affirmed its use. You set the standard that this is all right, this is good to have.

Ms. NORTON. You are absolutely right. Don't think I won't bring it to the attention of the chairman of the committee. We all do this just out of habit. No one thinks about it. We do have a Speaker who is greening the Capitol. I am going to suggest to her that when it comes to our offices, where they bring these great big bottles,

there may be nothing else you can do, nor do I know whether lead in the pipes exists here in the Congress. It probably does. But if we didn't invest in these, I bet we would save gobs of money. I asked it in order to engage in an act of self-incrimination.

Mr. Siglin, I don't know if you have a response to that.

Mr. SIGLIN. Congresswoman Norton, my children think I am a real pain because I do everything I can to keep them from drinking bottled water. In fact, we had a couple that we refilled because I didn't want them to buy new ones, and then I read some place that wasn't a good thing to do either, so I am with you completely. Talk to the Speaker and see if we can get it out of here.

Ms. NORTON. Mr. Siglin, could I just thank you for your suggestion. My colleague was not here when Mr. Siglin spoke about getting more nitrogen out, in other words, rising above the EPA's standard in light of what happens to the bay and rivers and tributaries, but he also had heard testimony about competing costs, and so he didn't offer a free lunch. Why don't you folks come up with some more money to get the nitrogen done with and the standard where it should be, especially since we are missing the deadline that had been set.

Mr. Siglin, you said that we should ask for a better standard, an improved standard, if the three jurisdictions in a version of win/win would also engage in financing the reduction of nitrogen, as well, was that your testimony, essentially?

Mr. SIGLIN. Yes, I would like to be clear that I think the Federal Government ought to help, to the greatest degree possible, WASA achieve the nitrogen concentration limits that it has been given by the EPA in this draft permit. But on top of that I suggested that I thought it would be the right thing to do, since we seem to be actually failing in the big picture, which is to figure out how to get the bay clean. The Clean Water Act has given us substantial progress since 1972, but the job isn't getting done.

If we continue with the regime of only doing the minimum necessary by law, and, in fact, fighting the minimum necessary by law, but ultimately only doing the minimum necessary by law, we are not going to get to the goal. So what I am suggesting is that, if it were possible, it would be a wonderful thing if the WASA Board of Directors would say, you know, WASA management, don't just take the legal minimum that has been handed to you by the EPA, but go beyond it.

We, in fact, do have the capacity at Blue Plains to do that. We could go beyond that if the decision were made.

Now, there is a cost involved, and, of course, a lot of this hearing to day is about how huge the cost of all these things are and where the tradeoffs are and all of that thing, but I guess that I would say it would be a wonderful thing if the world's largest advanced wastewater treatment plant, which happens to serve the Congress of the United States and the White House and the capital city of the free world, would say we are going to do more than the legal minimum, and then to have all the partners in this region say, yeah, we like that and we are going to help you pay for it.

Ms. NORTON. Mr. Siglin, I know you realize there is a precedent for that. We finally got all of the region to agree on the same kind of win/win if we can get the money out here for Metro.

Mr. SIGLIN. Yes.

Ms. NORTON. For the capital costs for Metro in return for dedicated funding from all three sources. That is the precedent that your suggestion seems to suggest.

Thank you very much, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Ms. Norton.

We will go to Mr. Van Hollen.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. I just have one question, and it really follows on to Ms. Norton's question about the WASA compliance with the requirements and standards set out in the Chesapeake Bay 2000 Agreement, which I understood to be no more than 4.689 million pounds annually.

I guess my question is to you, Mr. Capacasa, to just comment if you would on Mr. Siglin's testimony, because he raises what I think are some important points here. While you covered a lot of the EPA's relationship with WASA, you didn't raise in your testimony this issue, which I understand from Mr. Siglin's testimony that they continue to challenge the EPA's nutrient reduction goals that you have set out.

And, as he said in his statement, Mr. Siglin's statement, "WASA provides a case study in why we are failing to achieve that goal. Rather than accepting it as a result of a detailed, legitimate process, WASA needs to pursue legal strategies to try to avoid its ecological and legal obligations. Its arguments have been rejected twice by EPA regulators and unanimously rejected last month by the EPA's Environmental Appeals Board, yet it continues to pursue this protest."

I didn't see that in your testimony. I guess my question is: isn't this a legitimate concern? Wouldn't we all be better off trying to stick to the standard that EPA set for the benefit of trying to clean this up? And is this consuming a lot of your time, energy, and resources, this fight over the nutrient reduction standard?

Mr. CAPACASA. Thank you, Congressman. Yes, in short response, it is consuming a lot of time. There are three appeals to the permit that are eating up a lot of our time and, more importantly, delaying the important job of cleaning up the bay.

I think, in fairness to WASA, and I do want to be fair to them, D.C. was the first jurisdiction to meet the 2000 Chesapeake Bay goal by putting BNR in place at the D.C. WASA facility. They have already well exceed the phosphorus requirement for the bay. They are well beyond the legal minimum requirement for phosphorus induction to the bay. We are working now with them cooperatively on this nitrogen project.

But yes, in short answer, I wish the appeals went away because we would be able to get on with the job. I think it is unnecessary because the D.C. government had agreed to those allocations as part of the Chesapeake Bay program compact.

Again, in fairness, they are exceeding the phosphorus goal already, they are well beyond the legal limit, and we think, frankly, everybody should drop the appeals so we can get on with the job of finishing the upgrades to the facility that are necessary.

Mr. VAN HOLLEN. I agree. I mean, it seems to me that we have set this goal, we have set these standards that we should do everything we can to try and meet them. As we all know, I think, we

are already behind schedule with respect to the cleanup, and this delay simply puts us farther behind schedule.

In the interest of time I am not going to pursue this right now, but I do think that it is important for all these entities to get on board with the agreement that was signed, as has been pointed out, by all the regional entities here. It does raise lots of concerns when, having signed an agreement and agreed to certain goals, it appears that people are trying to backtrack out of it. But we can have a longer conversation on that.

Thank you, Mr. Chairman.

Mr. CAPACASA. Thank you.

Mr. DAVIS OF ILLINOIS. Gentlemen, thank you very much.

As we prepare for our fourth panel, I will proceed to introduce them. Mr. Dan Tangherlini is the city administrator, Deputy Mayor to Adrian Fenty, and serves as a member of WASA's Board of District railroads. Dan has served as the director of the District of Columbia Department of Transportation from June 2000 to February 2006, and is well known for his work as the interim general manager of the Washington Metropolitan Area Transit Authority.

Mr. Tony Griffin is the county executive of Fairfax County and has held the position since January 2000. Mr. Griffin serves on the Board of Directors of WASA.

Mr. Timothy Firestine, since 2006, Timothy Firestine has served as the chief administrative officer for Montgomery County, MD, also a member of the WASA Board of Directors. He has spent the last 28 years of his life working for Montgomery County.

And Dr. Jacqueline Brown is the chief administrative officer for Prince George's County, MD. She is the first woman in the history of the county to hold this position and has the responsibility of coordinating government services for 27 municipalities in addition to her role as a member of WASA's Board of Directors.

Ladies and gentlemen, thank you very much. If you would, stand and raise your right hands.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witnesses answered in the affirmative.

Let me thank you all so much for your public service and for your patience today and being here at this hour. We will begin with Mr. Dan Tangherlini.

Sir, you may proceed 5 minutes to summarize your statement. Of course, your full statement, as will be the statement of all the witnesses, is included in the record.

STATEMENTS OF DANIEL TANGHERLINI, CITY ADMINISTRATOR, DISTRICT OF COLUMBIA, AND D.C. WASA BOARD MEMBER; ANTHONY H. GRIFFIN, COUNTY EXECUTIVE, FAIRFAX COUNTY, AND D.C. WASA BOARD MEMBER; TIMOTHY FIRESTINE, CHIEF ADMINISTRATIVE OFFICER, MONTGOMERY COUNTY, AND D.C. WASA BOARD MEMBER; AND JACQUELINE F. BROWN, CHIEF ADMINISTRATOR OFFICER, PRINCE GEORGE'S COUNTY, AND D.C. WASA BOARD MEMBER

STATEMENT OF DANIEL TANGHERLINI

Mr. TANGHERLINI. Thank you very much and good afternoon, Mr. Chairman and members of the Subcommittee on Federal Workforce, Postal Services, and the District of Columbia. Thank you for allowing me the opportunity to speak with you today about the District of Columbia Water and Sewer Authority [D.C. WASA].

My name is Dan Tangherlini, as previously stated, and I am the city administrator for the city of the District of Columbia. In this role I am responsible for the daily operations of the D.C. agencies under mayoral control, preparing the District's annual operating budget, setting operational goals and performance measures to ensure that agencies are meeting the needs of the residents of the District of Columbia.

I am also privileged to be appointed by Mayor Adrian M. Fenty as a principal member of the District of Columbia Water and Sewer Authority Board of Directors and have been serving in that capacity for the past year.

D.C. WASA plays a vital role in protecting the health and safety of District of Columbia residents and visitors by providing safe drinking water and wastewater treatment services, as well as critical infrastructure needed for fire suppression and emergency response in the Nation's capital.

D.C. WASA operations, from operating the largest advanced wastewater treatment plant in the world to the development and implementation of the EPA mandated long-term control plan, will also greatly impact the cleanup of the Anacostia River watershed and economic revitalization along the waterfront.

It is important to recognize the history of D.C. WASA and its relationship to the District of Columbia and the greater Washington metropolitan region. In doing so, it is important to note that D.C. WASA's assets are the property of the District of Columbia, and that the predecessor organization to D.C. WASA was created as an entity to serve the Federal city and its residents, as represented by the majority it holds on the D.C. WASA Board of Directors.

In my view, the three critical issues facing D.C. WASA are the same today as they were almost a year ago when I initially was nominated to the D.C. WASA Board, and that is, one, undertaking the long-term control plan; two, upgrading the Blue Plains Water Treatment Plant to comply with the newly issued EPA permit requirements; and, three, investing in and improving the water and sewer infrastructure.

The first two issues will be critical in improving the water quality of the Anacostia River and surrounding ecosystem, which we can all agree has been neglected for far too long. The third affects the quality and dependability of drinking water in the District and

efficient use of our sewer system. Together, these three issues present a substantial challenge to D.C. WASA's finances and will greatly impact District and regional ratepayer.

Due to the fact that the District inherited its antiquated water and sewer infrastructure from the Federal Government, it is appropriate that our Federal partners remain engaged with this issue related to D.C. WASA. Further, I look forward to working with the committee and Congress to find ways to financially support our efforts to address the critical improvements that have been discussed here today.

Finally, I recognize that issues related to the financial oversight of D.C. WASA are of an interest to the committee; therefore, I would like to affirm that the District remains committed to working with my fellow D.C. WASA Board members, the region, and Congress to reach an agreement on governance that will be amenable to all parties and ensure the continued strength and quality of D.C. WASA.

Thank you very much for your time. I would be happy to answer any questions you may have at the appropriate time.

[The prepared statement of Mr. Tangherlini follows:]

TESTIMONY OF DAN TANGHERLINI,
DC CITY ADMINISTRATOR & DCWASA BOARD MEMBER
BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

DC WATER AND SEWER AUTHORITY OVERSIGHT HEARING
April 15, 2008

Good afternoon Mr. Chairman and members of the Subcommittee on Federal Workforce, Postal Service and the District of Columbia. Thank you for allowing me the opportunity to speak with you today about the District of Columbia Water and Sewer Authority (DCWASA). My name is Dan Tangherlini and I am the City Administrator for the District of Columbia. In this role, I am responsible for the daily operations of the DC agencies under Mayoral control, preparing the District's annual operating budget, and setting operational goals and performance measures to ensure that agencies are meeting the needs of the residents of the District of Columbia.

I am also privileged to be appointed by Mayor Adrian M. Fenty as a principal member of the District of Columbia Water and Sewer Authority (DCWASA) Board of Directors, and have been serving in that capacity for the past year. DCWASA plays a vital role in protecting the health and safety of District of Columbia residents and visitors by providing safe drinking water and wastewater treatment services as well as critical infrastructure needed for fire suppression and emergency response in the nation's capital. DCWASA operations, from operating the largest advanced wastewater treatment plant in the world, to the development and implementation of the EPA-mandated Long Term Control Plan, will also greatly impact the clean-up of the Anacostia River watershed and economic revitalization along the waterfront.

It is important to recognize the history of DCWASA and its relationship to the District of Columbia and the greater Washington Metropolitan Region. In doing so, it is important to note that DCWASA's assets are the property of the District of Columbia, and that the predecessor organization to DCWASA was created as an entity to serve the Federal City and its residents, as represented by the majority it holds on the DCWASA Board of Directors.

In my view, the three critical issues facing DCWASA are the same today as they were almost a year ago when I was initially nominated to the DCWASA Board: (1) undertaking a Long Term Control Plan, (2) upgrading the Blue Plains wastewater treatment plant to comply with newly issued EPA permit requirements and (3) investing in and improving the water and sewer infrastructure. The first two issues will be critical in improving the water quality of the Anacostia River and surrounding ecosystem, which we can all agree has been neglected for far too long. The third affects the quality and dependability of drinking water in the District and efficient use of our sewer system. Together, these three issues present a substantial challenge to DCWASA's finances and will greatly impact District and regional rate-payers.

While these are some of the District's top priorities, they are by no means the only issues currently facing DCWASA. We remain committed to ensuring that coordination efforts between DCWASA and the DC Fire and Emergency Services Department (FEMS) continues to progress with the Hydrant Inspection Program this spring, and technological improvements are made to improve the ability of first responders to access crucial infrastructure data on scene and in a timely fashion. Additionally, pipe and truck storage on the banks of the Anacostia River are not the signal DCWASA wants to send

about the value and importance of the river, and not the best way for the District to realize the highest return of its sizable investment in the ball park area. We are committed to working with DCWASA to move these functions to a more appropriate location.

Due to the fact that the District inherited its antiquated water and sewer infrastructure from the Federal government, it is appropriate that our Federal partners remain engaged with issues related to DCWASA. Further, I look forward to working with the Committee and Congress to find ways to financially support our efforts to address the critical improvements that have been discussed here today.

Finally, I recognize that issues related to the financial oversight at DCWASA are of interest to the Committee. Therefore, I would like to affirm that the District remains committed to working with my fellow DCWASA Board members, the region and Congress to reach an agreement on governance that will be amenable to all parties and ensure the continued strength and quality of DCWASA. Thank you very much for your time, and I would be happy to answer any questions you may have.

Mr. DAVIS OF ILLINOIS. Thank you very much.

We will go to Mr. Griffin.

STATEMENT OF ANTHONY H. GRIFFIN

Mr. GRIFFIN. Good afternoon, Mr. Chairman and Mr. Ranking Member, members of the subcommittee. I am Anthony H. Griffin, county executive, Fairfax County, VA. I also have the privilege to be serving as Fairfax County's voting member to the District of Columbia Water and Sewer Authority.

I appreciate the opportunity to speak to you today. I have taken the liberty to coordinate my testimony with my regional colleagues and fellow D.C. WASA Board members to minimize repetition in our comments.

As the most senior in tenure on the Board, having been Fairfax County's voting member since November 1996, I will attempt to give some historical perspective and context to this hearing. My colleagues will address current issues.

When the first meeting of the D.C. WASA Board of Directors was convened in October 1996, it was an organization borne of the District of Columbia Department of Public Works, saddled with debt, unreliable revenue, and a physical plant that was barely functioning.

Just this past March, D.C. WASA's bond rating had been improved to AA by one rating agency. Its reserves are healthy and its overall operation is approaching premier status, with the Blue Plains facility earning the industry's Platinum Award for its quality operation.

Consultants hired by the D.C. WASA Board of Directors to do a comprehensive budget review of the Authority at the behest of the City Council of the District of Columbia called D.C. WASA "the best-kept secret on the east coast."

The success achieved today has come about because the Board of Directors checked their jurisdictional hats at the door and committed to make D.C. WASA a world class organization. The District of Columbia and its jurisdictional neighbors can only make our metropolitan area a success if we all work together. The core cannot succeed without its neighbors, and the suburbs are diminished without the capital city state.

Twice the Board of Directors has commissioned a Board committee and studies to look at the issue of governance. The first time was in response to a legislative mandate, District of Columbia Law 11–102, Section 43–1677, to include responding to the requirement of "determining the feasibility of establishing the Authority as an independent regional authority and make recommendations for the ongoing relationship of user jurisdictions to the Authority."

The threshold question for the first study was, "Would sufficient benefits result from changing the current D.C. WASA governance structure to that of a regional authority model?" At the time of the study, the Authority was believed to be independent in that D.C. WASA had established its own rate structure and operating and capital budgets, provided that the Mayor and the Council of the District of Columbia could review and comment prior to being incorporated into the annual appropriation legislation sent by the District to Congress.

Water and sewer funds had been segregated from the District's general fund, and D.C. WASA had established independent bonding authority. New financial procurement and personnel systems had been created to support D.C. WASA's ability to operate.

Against this 3-year record of independent operation, the tasked committee and the Board of Directors concluded that, while a wholly independent regional authority was technically feasible, no change in D.C. WASA's governance should be pursued.

I was on the committee and was the maker of the motion to not change D.C. WASA's governance structure. My rationale was that the current organization, while not perfect, was sufficiently independent and accomplishing what was intended in terms of accountability. Additionally, seeking change would be politically difficult and not the best use of resources.

One recommendation from the initial governance study was to revisit the question of governance no later than 2005, on the theory that there is benefit from re-examining whether the purpose of D.C. WASA is still being accomplished.

The second review completed in 2006 reached a similar conclusion to the first in that the current structure was working. The additional consideration not addressed in the initial study concerned D.C. WASA's long-term interest in who operates the Washington Aqueduct currently operated by the U.S. Army Corps of Engineers.

I recite this history because I believe it is important to make clear that D.C. WASA has become a success story because all the jurisdictional partners focused on making it a success. Fairfax County was looking to make sure that its investment produced accountable and reliable service, nothing less, but nothing more. D.C. WASA will not advance if it is at the expense of one or more of its member jurisdictions.

I am, on the county's behalf, very sensitive to the ownership and location of the Blue Plains facility. The Board strictly adheres to voting according to joint use and non-joint use on contractual and financial issues. Retail rates are approved only by District members of the Board, but my observation is that rate increases have been balanced between the legitimate business requirement of D.C. WASA and the needs and the ability to pay of the customers being served. This balance was not always observed, requiring the creation of D.C. WASA.

As long as the Board of Directors continues to be fiduciarily prudent and responsible, the financial independence that Congress intended for D.C. WASA should not be compromised. Consequently, Fairfax County supports the passage of H.R. 5778, clarifying that the chief financial officer for the District of Columbia cannot override decisions of the D.C. WASA Board of Directors. The proposed legislation is, quite frankly, the clarification that Congressman Tom Davis intended in his colloquy on H.R. 4942, fiscal year 2001 District of Columbia appropriations on water and sewer authority.

Mr. Chairman, thank you again for the privilege to speak. I will be pleased to respond to the committee's questions.

[The prepared statement of Mr. Griffin follows:]

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Testimony of

Anthony H. Griffin, County Executive,
Fairfax County, Virginia
and
Principal and Vice-Chairman,
District of Columbia Water and Sewer Authority

Before the Subcommittee on Federal Workforce, Postal Service and the District of Columbia

Danny K. Davis, Chairman

Tuesday, April 15, 2008

Room 2157
Rayburn House Office Building
Washington, DC 20515
2:00 p.m.

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Good afternoon Mr. Chairman, Mr. Ranking Member, and Members of the Subcommittee. I am Anthony H. Griffin, County Executive, Fairfax County, Virginia. I also have the privilege to be serving as Fairfax County's voting member to the District of Columbia Water and Sewer Authority (DCWASA).

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regional authority was technically feasible, no change in DCWASA's governance should be pursued. I was on the committee and was the maker of the motion to not change DCWASA's governance structure. My rationale was that the current organization, while not perfect, was sufficiently independent and accomplishing what was intended in terms of accountability. Additionally, seeking change would be politically difficult and not the best use of resources.

One recommendation from the initial governance study was to revisit the question of governance no later than 2005, on the theory that there is benefit from reexamining whether the purpose of DCWASA is still being accomplished. The second review, completed in 2006, reached a similar conclusion to the first, in that the current structure was working. The additional consideration, not addressed in the initial study concerned DCWASA's long term interest in who operates the Washington Aqueduct, currently operated by the U.S. Army Corps of Engineers.

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I am, on the County's behalf, very sensitive to the ownership and location of the Blue Plains facility. The Board strictly adheres to voting according to "joint-use and non joint-use" on contractual and financial issues. Retail rates are approved only by District members of the Board, but my observation is that rate increases have been balanced between the legitimate business requirement of DCWASA and the needs and ability to pay of the customers being served. This balance was not always observed, requiring the creation of DCWASA. As long as the Board of Directors continues to be fiduciarily prudent and responsible, the financial independence that Congress intended for DCWASA should not be compromised. Consequently, Fairfax County supports the passage of H.R. 5778 clarifying that the Chief Financial Officer for the District of Columbia cannot override decisions of the DCWASA Board of Directors. The proposed legislation is, quite frankly, the clarification that Congressman Tom Davis intended in his "Colloquy on H.R. 4942, FY2001 District of Columbia Appropriations on Water and Sewer Authority".

Mr. Chairman, thank you again for the privilege to speak. I will be pleased to respond to the Committee's questions.

Mr. DAVIS OF ILLINOIS. Thank you very much. I am going to ask Ms. Norton if she would continue with the hearing while I run and vote.

Ms. NORTON [presiding]. Of course, Mr. Chairman.

The next witness is Timothy Firestine.

STATEMENT OF TIMOTHY FIRESTINE

Mr. FIRESTINE. Thank you, Congresswoman Norton and members of the subcommittee. I am Tim Firestine, the chief administrative officer for Montgomery County, MD, and a principal member of the Board of Directors of the D.C. Water and Sewer Authority.

I appreciate the opportunity to speak to you today about preserving the independent regional nature of the D.C. Water and Sewer Authority. In particular, my testimony focuses on preserving the separate financial existence of WASA from District of Columbia governance. In order to accomplish this, I support passage of H.R. 5778, the District of Columbia Water and Sewer Authority Independence Preservation Act.

As has been mentioned several times today, WASA was created in 1996 to respond to serious operational and financial problems at the Blue Plains Wastewater Management Plant. In a 1996 report of this committee about the District of Columbia Water and Sewer Act of 1996, it was noted that, "A collapse of Blue Plains would be an ecological catastrophe." This same report made it clear that the path to recovery required that WASA finances be managed independently from the District's. It also noted that, in order for WASA to be successful, it must remain a regional authority.

The report also pledges that, "The Committee commits itself to careful monitoring of the Water and Sewer Authority as it moves forward. It will do anything it can to help or improve the prospects of the Authority, and will be vigilant in looking for problems or attempts to subvert the performance of the Authority." That is where we need your help.

Unfortunately, the independent WASA that has flourished over the past 10 years or so is jeopardized by the possible implication of subsequent Federal legislation that established the position of chief financial officer for the District and granted far-reaching authority to the CFO. Until 2006 an MOU between WASA and the District CFO addressed this conflict between the legislation creating WASA and that which created D.C. CFO position.

In 2006 an interpretation of law that created the D.C. CFO requires that position oversee WASA and is not allowed to enter into an MOU with WASA. That changes the status quo. This interpretation endangers the financial independence so desired by this committee and the regional partners when WASA was created.

Since its creation, WASA has established independent systems of governance, including those for financial management, procurement, human resources, and retirement. The suburban jurisdictions or WASA's wholesale customers depend on sewage services, not water, as was noted before, provided by WASA and have an ownership stake in these joint use sewage facilities, including the Blue Plains Wastewater Treatment Plant.

For over 30 years D.C.'s suburban partners have paid more than 50 percent of Blue Plains' operation and maintenance costs,

amounting to about currently $55 million annually. Our share of Blue Plains' capital costs is even higher at 60 percent, and is expected to exceed $1 billion over the next 10 years as WASA embarks on the nitrogen removal wet weather plan to advance the goals of the Chesapeake Bay program. With over $100 million of resources from the suburban governments being committed to at Blue Plains annually, there is a clear interest on the part of the suburban jurisdictions to continue to share in the financial oversight of this regional utility.

Over the years, WASA has been a model now of successful regional cooperation. As was noted, the bond rating agencies just recently upgraded the bond rating to a strong AA. In the report issued by the Standard & Poor's credit rating agency, "the upgrade is based on a demonstrated track record of sound financial operations over time." Bond rating agencies have consistently cited the participation of the suburban jurisdictions and WASA's financial independence as key WASA strengths that have played a role in the strong bond rating that has evolved for WASA.

As noted, recent actions seriously compromised the independence of this regional authority, and we hope would be reversed. Therefore, I would urge the committee to reassert its support for WASA's independent regional authority. Since this is a matter of an inadvertent conflict with Federal law, this issue cannot be remedied without congressional intervention; therefore, I would respectfully request that the committee consider the adoption of H.R. 5778, the District of Columbia Water and Sewer Authority Independence Preservation Act, which removes any ambiguity in Federal law as it relates to the authority of the D.C. CFO's fiscal authority over WASA.

Thank you very much for this opportunity to testify before the committee.

[The prepared statement of Mr. Firestine follows:]

STATEMENT OF TIMOTHY FIRESTINE

CHIEF ADMINISTRATIVE OFFICER, MONTGOMERY COUNTY, MARYLAND

MEMBER, D.C. WATER AND SEWER AUTHORITY BOARD OF DIRECTORS

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE AND THE DISTRICT OF COLUMBIA

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

APRIL 15, 2008

Thank you, Chairman Davis, Ranking Member Marchant, and Members of the Subcommittee. I am Timothy Firestine, the Chief Administrative Officer for Montgomery County, Maryland, and a principal member of the Board of Directors of the D.C. Water and Sewer Authority. I appreciate the opportunity to speak with you today about the importance of preserving the independent, regional nature of the D.C. Water and Sewer Authority. In particular, my testimony focuses on preserving the separate financial existence of WASA from District of Columbia governance. In order to accomplish this, I support passage of H.R. 5778, the "District of Columbia Water and Sewer Authority Independence Preservation Act."

WASA was created in 1996 to respond to serious operational and financial problems at the Blue Plains Wastewater Management Plant. In a 1996 report issued by the Committee on Government Reform and Oversight concerning the District of Columbia Water and Sewer Act of 1996, it was noted that *"a collapse of Blue Plains would be an ecological catastrophe."* This Report made it clear that the path to recovery required that WASA's finances be managed independently from the District's. It also noted that in order for WASA to be successful it must remain a regional authority. The Report pledges that *"the Committee commits itself to careful monitoring of the Water and Sewer Authority as it moves forward. It will do anything it can to help or improve the prospects of the Authority, and will be vigilant in looking for problems or attempts to subvert the performance of the Authority."*

Unfortunately, the independent WASA that has flourished over the past ten or so years is jeopardized by the possible implications of subsequent legislation that established the position of Chief Financial Officer for the District and granted far-reaching authority to the CFO. Until 2006, a memorandum of understanding between WASA and the District government addressed any potential conflict between the legislation creating WASA and

that which created the DC CFO position. In 2006, an interpretation of the law that created the DC CFO requires that the position oversee WASA. This interpretation endangers the financial independence so desired by Congress and the regional partners when WASA was created.

Since its creation, WASA has established independent systems of governance including those for financial management, procurement, human resources and retirement. The suburban jurisdictions, or WASA's "wholesale customers," depend on sewage services (not water) provided by WASA and have an ownership stake in these joint-use sewage facilities including the Blue Plains Wastewater Treatment Plant. For over 30 years, DC's suburban partners have paid more than 50 percent of Blue Plains' operation and maintenance costs amounting to $55 million annually. Our share of Blue Plains' capital costs is even higher at 60 percent, and is expected to exceed $1 billion over the next ten years as WASA embarks on the Nitrogen Removal/Wet Weather Plan to advance the goals of the Chesapeake Bay Program. With over $100 million presently flowing to WASA annually, there is a clear interest on the part of suburban jurisdictions to continue to share in the financial oversight of this regional utility.

Over the years, WASA has been a model of successful regional cooperation and has developed state-of-the-art systems for customer service, human resource management, procurement actions, and facility operations. WASA is now in excellent financial condition and has progressed from being unrated by bond rating agencies at its creation to its current bond rating of AA by the Standard and Poor's credit rating agency. Standard and Poor's recently upgraded WASA's bond rating to this level and noted in its rating report that *"The upgrade is based on a demonstrated track record of sound financial operations over time."* Bond rating agencies have consistently cited the participation of the suburban jurisdictions and WASA's financial independence as key WASA strengths that have played a role in the strong bond rating that has evolved for WASA.

In addition, an independent comprehensive budget review was recently conducted of WASA at the urging of the Council of the District of Columbia through its Fiscal Year 2008 Budget Support Act of 2007. The overall assessment of WASA in this review identified WASA as *"A high performing water and sewer utility; equal to or better than peers on most measures (efficiency and effectiveness)."*

Regrettably, WASA's independent regional structure, lauded by these studies, has been seriously jeopardized by the District of Columbia's effort to resolve the conflict between two laws by passing legislation that subordinates WASA's financial oversight to the DC CFO. This action seriously compromises the independence of this regional authority and must be reversed.

Therefore, I would urge the Committee to reassert its support for WASA's independent regional authority. Since this is a matter of an inadvertent conflict with federal law, this issue cannot be remedied without Congressional intervention. Therefore, I would respectfully request that the Committee consider the adoption of H.R. 5778, the "District of Columbia Water and Sewer Authority Independence Preservation Act," which

removes any ambiguity in federal law as it relates to the authority of the DC CFO's fiscal authority over WASA.

Thank you very much for this opportunity to testify before the Committee.

Ms. NORTON. Thank you very much.

My good colleague has to go to vote. Since I can't go, I asked him to vote for me and offer his statement.

Mr. VAN HOLLEN. I apologize for having to run for a vote, but I just want to do two things; thank all the members of the panel, with special thanks to those who are here representing two of the jurisdictions that I represent, Mr. Firestine and Ms. Brown. Thank you for your testimony.

And thank you, Ms. Norton, for working with us to try and address this issue which, as you said, we just want to make sure that the intent that you and others put together and put on paper back in the 1990's is something that is preserved going forward. I think there has been, as Mr. Firestine just said in his testimony, other intervening Federal actions created a cloud of uncertainty here which we are now trying to resolve, and we have to do it through Federal law. So thank you for your partnership on this and I thank the witnesses.

If I can get back, I will.

Ms. NORTON. Ms. Brown.

STATEMENT OF JACQUELINE F. BROWN

Ms. BROWN. Good afternoon, Congresswoman. I am Dr. Jacqueline Brown, and I have served as the chief administrative officer for Prince George's County government since December 2002. Since April 5, 2006 I have served as a principal member of the Board of Directors of the D.C. Water and Sewer Authority.

As a Board member, I serve on the Budget and Finance Committee and on the Human Resources Committee. I take my responsibility to meet the mission of WASA very seriously, because what happens to and with WASA affects the region.

My focus today is the residential diversity of the WASA work force. I would like to start off by saying that I am extraordinarily grateful and supportive to Congresswoman Eleanor Holmes Norton for her April 10th there to Mayor Adrian Fenty and Chairman Vincent Gray that requested the D.C. City Council introduce emergency legislation which would exempt WASA from the Jobs for D.C. Residents Amendment for 2007. Very, very indicative of the support and the collegiality that has been demonstrated here today.

In addition, I am very grateful for the support of Mayor Adrian Fenty's proposed language in the fiscal year 2009 Budget Support Act of 2008 that exempts WASA from the Jobs for D.C. Residents Amendment for 2007.

What I would like to do in terms of that is just to take time to do a little fact-finding that, as a suburban Board member of this essentially important and regionally important authority, I want to just present some of the work force facts that are here for the record.

The employees are about 923, and almost 26 percent are from the District of Columbia. Almost 65 percent are from Maryland, and 9 percent are from Virginia, and .2 percent are from somewhere else. We actually have breakdowns in some of the counties in Maryland, since Maryland has about 65 percent of the work force for WASA. In Maryland we have 20 employees from Anne Arundel, 20 from Baltimore County, Charles County has 107, How-

ard County has 5, Montgomery County has 50, Prince George's has 376, and other counties have 21 members.

What we have here is a situation where the residentially diverse work force in WASA has actually produced one of the stellar water authorities in the Nation. I think every last one of our employees is dedicated to fulfilling the regional mission of serving all of our customers with outstanding service by providing reliable and cost effective water and wastewater services in accordance with best practices.

Again, I strongly support the efforts by Congresswoman Norton and by Mayor Fenty in terms of protecting the residential diversity of the WASA work force. I also, like my colleagues, strongly support H.R. 5778, which is the District of Columbia Water and Sewer Authority Independence Preservation Act.

I thank you for this opportunity to speak with you and to thank you. I will be happy to answer any questions.

[The prepared statement of Ms. Brown follows:]

Testimony Presented on the D.C. Water and Sewer Authority (WASA) to the Subcommittee on Federal Workforce, Postal Service and the District of Columbia

Testimony Presented by Dr. Jacqueline F. Brown, Member, D.C. WASA Board of Directors, and Chief Administrative Officer for Prince George's County, Maryland.

Tuesday, April 15, 2008
2:00 P.M.
Room 2157
Rayburn House Office Building
Washington, D.C.

Dr. Jacqueline F. Brown, D.C. WASA Testimony
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
April 15, 2008

Chairman Davis, Ranking Member Marchant, and esteemed members of the Subcommittee, it is an honor to present testimony on the D.C. Water and Sewer Authority. I have served as Chief Administrative Officer for the Prince George's County government since December 2002. Since April 5, 2006, I have served on the Board of Directors of the D.C. Water and Sewer Authority. As a Board member, I serve on the Budget and Finance Committee and on the Human Resources Committee. I take my responsibility to meet the mission of WASA very seriously, because what happens to and with WASA affects the region.

My testimony will focus on our concern regarding the impact of the WASA "Jobs for D.C. Residents Amendment Act of 2007" put forth by the District of Columbia City Council in the Budget Support Act of 2008. Of particular concern is page 12 of the legislation, which amends WASA's enabling legislation and requires the General Manager of WASA to be a resident of the District, and that a ten point preference be given to qualified District-resident applicants for positions at WASA. The legislation further requires the WASA Board of Directors to determine what an applicant has to submit for proof of residency. Please see the attached copy of D.C. Act 17-172 Section 213, page 12.

As a suburban Board member of this essential and regionally important authority, I have concerns regarding the impact of this legislation on the potential applicant pool for WASA. The present facts are as follows:

- 90% of the WASA service area is outside of the borders of the District of Columbia;
- 75% of the population served by WASA is outside of the borders of the District of Columbia; and
- 75% of current WASA employees' residences are outside the borders of the District of Columbia.

As of November 29, 2007, statistics for WASA's 979 employees' places of residence were as follows:

- 267 employees, or 27%, live in the District of Columbia
- 618 employees, or 63%, live in Maryland:
  - 410 employees live in Prince George's County
  - 80 employees live in Charles County
  - 55 employees live in Montgomery County
  - 21 employees live in Anne Arundel County
  - 14 employees live in Howard County
  - 13 employees live in Baltimore City
  - 13 employees live in Calvert County
  - 8 employees live in Baltimore County
  - 3 employees live in St. Mary's County
  - 1 employee lives in Queen Anne County
- 91 employees, or 9%, live in Virginia
- 2 employees, or 1%, live elsewhere

This data is presented to factually support the real regional nature of WASA, both as a service provider and as an employer. Imposing a District of Columbia residency preference onto a regional authority is not only discriminatory but it also diminishes the opportunities for WASA to continue to hire the best in the business regardless of residence. Our residentially diverse employees have produced one of the stellar water authorities in the nation. Why snatch defeat out of the jaws of success when we, as an authority, can continue to demonstrate workforce excellence in meeting our regional mission, which is: "To serve all of our customers with outstanding service by providing reliable and cost-effective water and wastewater services in accordance with best practices."

Thank you for the opportunity to speak with you, and I will be happy to answer any questions.

Attachment: "Jobs for D.C. Residents Amendment Act of 2007"

ENROLLED ORIGINAL

AN ACT

D.C. ACT 17-172

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 26, 2007

Codification District of Columbia Official Code

2001 Edition

2008 Winter Supp.

West Group Publisher

To require that all agencies and instrumentalities use a 100-point scale for evaluating potential employees and give qualified District resident applicants a 10-point preference over qualified non-District resident applicants; to require that all agency and instrumentality heads be District residents; and to amend the District of Columbia Statehood Delegation Fund Commission Establishment and Tax Check-Off Amendment Act of 2004, the Confirmation Act of 1978, the District of Columbia Government Comprehensive Merit Personnel Act of 1978, the District of Columbia Retirement Reform Act, the District of Columbia Election Act, the Law to Legalize Lotteries, Daily Numbers Games and Bingo and Raffles for Charitable Purposes in the District of Columbia, the Omnibus Sports Consolidation Act of 1994, the District of Columbia Housing Authority Act of 1999, the Office of Zoning Independence Act of 1990, the Washington Convention Center Authority Act of 1994, the Fiscal Year 2002 Budget Support Act of 2001, An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen and for other purposes, the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, the District of Columbia School Reform Act of 1996, the District of Columbia Housing Finance Agency Act, and the Public Parking Authority Establishment Act of 1994 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Jobs for D.C. Residents Amendment Act of 2007".

TITLE I. DISTRICT RESIDENCY PREFERENCES AND REQUIREMENT.

Sec. 101. District residency preference for employees; District residency requirement for agency heads.

(a) Notwithstanding any other provision of law, all District subordinate agencies, independent agencies, and instrumentalities shall use a ranking system based on a scale of 100 points for all employment decisions for positions equivalent to Career Service, educational employee, Legal Service, and Management Supervisory Service positions, as defined under section 301(3), (6), (13A), and (13B) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §

2-139; D.C. Official Code § 1-603.01(3), (6), (13A), and (13B)), and shall award each District resident applicant a preference of 10 points unless the resident declines the preference points. The 10 preference points shall be in addition to any points awarded on the 100-point scale.

(b) An applicant claiming a hiring preference shall submit no less than 8 proofs of bona fide residency in a manner determined by the Mayor. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the agency or instrumentality for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(c)(1) Each subordinate agency head shall submit to the Mayor and the Council quarterly reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Mayor shall integrate into each subordinate agency's annual performance objectives the rate of success in hiring District residents.

(2) Each independent agency and instrumentality shall submit to the Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The reports shall explain the reasons for employment of non-District residents.

(d) The Mayor shall conduct annual audits of each subordinate agency's personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (b) of this section. Audit reports shall be submitted annually to the Council.

(e) Each subordinate agency, independent agency, and instrumentality head shall be a resident of the District of Columbia throughout his or her tenure and shall forfeit his or her position if he or she fails to remain a resident of the District of Columbia.

(f) The Mayor may issue rules to implement the provisions of this title.

TITLE II. CONFORMING AMENDMENTS

Sec. 201. Section 15 of the District of Columbia Statehood Delegation Fund Commission Establishment and Tax Check-Off Amendment Act of 2004, effective March 16, 2005 (D.C. Law 15-226; D.C. Official Code § 1-129.05), is amended as follows: Amend § 1-129.05

(a) Subsection (a) is amended by striking the phrase "Commission." and inserting the phrase "Commission; provided, that the Executive Director of the Commission shall be a District resident and shall remain a District resident for the duration of his or her employment by the Commission. Failure to maintain District residency shall result in a forfeiture of the position." in its place.

(b) A new subsection (a-1) is added to read as follows:

"(a-1) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-

District resident applicant for all positions within the Commission unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Commission. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel of the Commission for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

(c) Subsection (b) is amended by striking the phrase "Commission." and inserting the phrase "Commission, a listing of the names of all new employees, their pay schedules, titles, and place of residence." in its place.

Sec. 202. Section 2(a)(2) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)(2)), is amended by striking the phrase "section." and inserting the phrase "section, or the provisions of section 1059(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective June 10, 1998 (D.C. Law 12-124; D.C. Official Code § 1-610.59(a))." in its place. Amend § 1-523.01

Sec. 203. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 203 (D.C. Official Code § 1-602.03) is amended by adding a new subsection (c) to read as follows: Amend § 1-602.03

"(c) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant to fill all positions as non-educational employees of the District of Columbia Board of Education and Board of Trustees of the University of the District of Columbia unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the respective Boards. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The District of Columbia Board of Education and Board of Trustees of the

University of the District of Columbia shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

(b) Section 501(k) (D.C. Official Code § 1-605.01(k)) is amended by adding 2 new sentences at the end to read as follows: Amend § 1-605.01

"The Executive Director shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Board. Failure to maintain District residency shall result in a forfeiture of the position.".

(c) Section 601 (D.C. Official Code § 1-606.01) is amended as follows: Amend § 1-606.01

(1) Subsection (g)(1)(A) is amended to read as follows:

"(A)(i) An Executive Director;

"(ii) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position;".

(2) A new subsection (l) to read as follows:

"(l) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Office. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Office of Employee Appeals shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

(d) Section 801 (D.C. Official Code § 1-608.01) is amended as follows: Amend § 1-608.01

(1) Subsection (e) is amended as follows:

(A) Paragraphs (1) and (2) are amended to read as follows:

"(e)(1) Notwithstanding any provision of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), an applicant for District government employment in the Career Service who is a bona fide resident of the District at the time of application shall be given a 10-point hiring preference over a nonresident applicant unless the applicant declines the preference. This preference shall be in addition to, and not instead of, qualifications established for the position

"(2) An applicant claiming a hiring preference shall submit 8 proofs of bona fide residency in a manner determined by the Mayor. If hired, the employee shall agree in

writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel for the agency or instrumentality for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

(B) Paragraph (7)(B) is amended by striking the phrase "5 consecutive years" and inserting the phrase "7 consecutive years" in its place.

(2) A new subsection (g) is added to read as follows:

"(g) Each subordinate agency head shall submit to the Mayor and the Council quarterly reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Mayor shall integrate into each subordinate agency's yearly performance objectives the rate of success in hiring District residents. The Mayor shall conduct annual audits of each subordinate agency's personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (e)(2) of this section. Audit reports shall be submitted annually to the Council.".

(e) Section 801A (D.C. Official Code § 1-608.01a) is amended as follows: Amend § 1-608.01a

(1) Subsection (d) is amended as follows:

(A) Paragraphs (1) and (2) are amended to read as follows:

"(d)(1) Notwithstanding any provision of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), an applicant for District government employment in the Educational Service who is a bona fide resident of the District at the time of application shall be given a 10-point hiring preference over a nonresident applicant unless the applicant declines the preference. This preference shall be in addition to, and not instead of, qualifications established for the position.

"(2) An applicant claiming a hiring preference shall submit 8 proofs of bona fide residency in a manner determined by the Boards. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel for the agency for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

(B) Paragraph (7)(B) is amended by striking the phrase "5 consecutive years" and inserting the phrase "7 consecutive years" in its place.

(2) A new subsection (f) is added to read as follows:

"(f) Each Board shall submit to the Council quarterly reports detailing the names of all new employees, their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Board shall integrate into its yearly performance objectives the rate of success in hiring District residents. The Boards shall conduct annual audits of its personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (d)(2) of this section. Audit reports shall be submitted annually to the Council.".

(f) Section 1059(b) (D.C. Official Code § 1-610.59 (b)) is repealed. Amend § 1-610.59

Sec. 204. Section 121(g)(2) of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-711(g)(2)), is amended as follows: Amend § 1-711

(a) The existing text is re-designated as subparagraph (A).

(b) New subparagraphs (B) and (C) are added to read as follows:

"(B) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant for a staff position shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

"(C) The Executive Director, who shall be appointed to manage the day-to-day operations of the Board, shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

Sec. 205. Section 5(e)(1) of the District of Columbia Election Act, approved August 12, 1955 (69 Stat. 700; D.C. Official Code § 1-1001.05(e)(1)), is amended as follows: Amend § 1-1001.05

(a) The existing text is designated subparagraph (A).

(b) New subparagraphs (B) and (C) are added to read as follows:

"(B) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

"(C) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this

section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel of the Board for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees, their pay schedules, titles, and place of residence.".

Sec. 206. Section 2-2503 of section 4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code § 3-1303), is amended as follows: Amend § 3-1303

(a) Subsection (a) is amended by adding 2 new sentences at the end to read as follows:

"The Executive Director shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Board. Failure to maintain District residency shall result in a forfeiture of the position.".

(b) Subsection (d) is amended as follows:

(1) Paragraph (3) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (4) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (5) is added to read as follows:

"(5)(A) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Authority unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

"(B) The Board shall submit to the Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

ENROLLED ORIGINAL

Sec. 207. The Omnibus Sports Consolidation Act of 1994, effective August 23, 1994 (D.C. Law 10-152; D.C. Official Code § 3-1401 *et seq.*), is amended as follows:

(a) Section 6(a) (D.C. Official Code § 3-1405(a)) is amended by adding a new sentence at the end to read as follows: Amend § 3-1405

"The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(b) Section 18 (D.C. Official Code § 3-1417) is amended by adding 5 new sentences at the end to read as follows: Amend § 3-1417

"Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Commission unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

(c) Section 20 (D.C. Official Code § 3-1419) is amended by adding a new sentence at the end to read as follows: Amend § 3-1419

"The Commission shall also submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 208. The District of Columbia Housing Authority Act of 1999, effective March 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-201 *et seq.*), is amended as follows:

(a) Section 14(a) (D.C. Official Code § 6-213(a)) is amended by adding a new sentence at the end to read as follows: Amend § 6-213

"The Executive Director shall be a District resident and shall remain a District residency throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(b) Section 16 (D.C. Official Code § 6-215) is amended by adding a new subsection (f) to read as follows: Amend § 6-216

"(f) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Authority unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C.

Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Authority shall submit to the Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 209. Section 3 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.02), is amended to read as follows: Amend § 6-623.02

"Sec. 3. Office of Zoning – Director and staff; appointment.

"(a) The Office of Zoning shall consist of a Director and other staff as the Zoning Commission considers necessary.

"(b) The Director of the Office of Zoning shall be appointed by the District members of the Zoning Commission and shall serve as an excepted service employee in accordance with section 901 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.01). The Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

"(c) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office of Zoning unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Office of Zoning. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Office of Zoning for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Office shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 210. The Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.01 *et seq.*), is amended as follows:

(a) Section 207(a) (D.C. Official Code § 10-1202.07(a)) is amended by adding a new sentence at the end to read as follows: Amend § 10-1202.07

"The General Manager shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Authority. Failure to maintain District residency shall result in a forfeiture of the position.".

(b) Section 216 (D.C. Official Code § 10-1202.16) is amended to read as follows: Amend § 10-1202.16

"The District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), shall not apply to employees of the Authority; provided, that:

"(1) Titles V and XVII shall apply.

"(2) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Authority unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit 8 proofs of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Authority shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 211. Section 1506 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4235), is amended by adding a new subsection (b-1) to read as follows: Amend § 22-4235

"(b-1) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the CJCC unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the CJCC An applicant claiming the hiring preference under this section shall

agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the CJCC for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The CJCC shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 212. Section 8 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen and for other purposes, approved March 4, 1913 (37 Stat. 993; scattered sections of the D.C. Official Code), is amended as follows:

(a) Paragraph 91A (D.C. Official Code § 34-804) is amended as follows: Amend § 34-804

(1) Subparagraph (b) is amended by adding a new sentence at the end to read as follows:

"The People's Counsel shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(2) A new subparagraph (c-1) is added to read as follows:

"(c-1) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office of the People's Counsel unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the People's Counsel. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Office of the People's Counsel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The People's Counsel shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

(b) Paragraph 95 (D.C. Official Code § 34-806) is amended by adding a new subparagraph (a-1) to read as follows: Amend § 34-806

"(a-1) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Commission unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs

for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Commission. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Commission for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

Sec. 213. The Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2201.01 *et seq.*), is amended as follows:

(a) Section 206 (D.C. Official Code § 34-2202.06) is amended by adding 2 new sentences at the end to read as follows: Amend § 34-2202.06

"The General Manager shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Authority. Failure to maintain District residency shall result in a forfeiture of the position.".

(b) Section 215 (D.C. Official Code § 34-2202.15) is amended by adding a new subsection (c) to read as follows: Amend § 34-2202.15

"(c)(1) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Authority unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

"(2) The Authority shall submit to the Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 214. The District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321 [226]; D.C. Official Code § 38-1800.01 *et seq.*), is amended as follows:

(a) Section 2207 (D.C. Official Code § 38-1802.07) is amended by adding a new subsection (d) to read as follows: Amend § 38-1802.07

"(d) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.02 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within a public charter school unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 23, 2007 (Enrolled version of Bill 17-185), shall submit 8 proofs of residency upon employment in the manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the public charter school for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The public charter school shall submit to the Board annual reports detailing the names of all new employees and their pay schedules, titles, and place of resident.".

(b) Section 2214(d) (D.C. Official Code § 38-1802.14(d) is amended as follows: **Amend § 38-1802.14**

(1) Paragraph (1) is amended by adding a new sentence at the end to read as follows:

"The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(2) Paragraph (2) is amended by adding 6 new sentences to read as follows:

"Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

Sec. 215. The District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2701.01 *et seq.*), is amended as follows: **Amend § 42-2702.03**

(a) Section 203 (D.C. Official Code § 42-2702.03) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(2) Subsection (c) is amended as follows:

(A) The existing text is re-designated as paragraph (1).

(B) A new paragraph (2) is added to read as follows:

"(2) Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Agency unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit 8 proofs of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Agency for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.".

Amend § 42-2705.03

(b) Section 503 (D.C. Official Code § 42-2705.03) is amended by striking the phrase "accomplishments," and inserting the phrase "accomplishments, and the names of all new employees and their pay schedules, titles, and place of residence," in its place.

Sec. 216. The Public Parking Authority Establishment Act of 1994, effective August 23, 1994 (D.C. Law 10-153; D.C. Official Code § 50-2501 *et seq.*), is amended as follows:

Amend § 50-2506

(a) Section 7(a) (D.C. Official Code § 50-2506(a)) is amended by adding a new sentence at the end to read as follows:

"The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.".

(b) A new section 7a is added to read as follows:

"Sec. 7a. Employees.

"Notwithstanding the provisions of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), each qualified District resident applicant for a position within the Authority shall receive an additional 10-point preference over a qualified non-District resident applicant unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after the effective date of the Jobs for D.C. Residents Amendment Act of 2007, passed on 2nd reading on October 2, 2007 (Enrolled version of Bill 17-185), shall submit proof of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this

section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Authority shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.".

TITLE III. SUBJECT TO APPROPRIATION; FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 301. Inclusion in the budget and financial plan.

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 302. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Vincent C. Gray
Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
October 26, 2007

Ms. NORTON. Thank you, Ms. Brown. I have just a few questions.

I do want to say to Ms. Brown that the District of Columbia is pleased to contribute so heftily to the gross regional product of the state of several counties in Maryland. I understand your concern. But I think the concern of the District was that these people do their job. They are unionized workers, earn their money here in the District of Columbia. The point is they earn it from the region, as well as from this city, and I appreciate the way in which Mr. Tangherlini, the Mayor, Mr. Gray, and the Board have worked with me and with Mr. Van Hollen to arrive at an amicable way to meet a resolution.

Could I ask each of you, you heard a proposal much akin to the Metro proposal. We have a very big nitrogen problem here, and we are really playing games here. You heard the testimony. You know the issue enough to know that WASA feels so hard-pressed that it fights the EPA, knowing full well that EPA does not have the gold standard for getting nitrogen out of the river and out of our water, yet WASA feels all kinds of competing priorities, particularly when it comes to cost.

You all, I think, now participate in a bill that the entire region has cosponsored, a win/win bill that we are trying with some success—we think we can still do it—to get the Federal Government to pay for an increased share of Metro for capital spending in return for dedicated funding from the region, since we are the only Metro that doesn't have dedicated funding.

Mr. Siglin testified that the only way to get out of the nitrogen rut without pretending that we are really cleaning up the Anacostian water is to do something similar. He didn't cite that. I cite that as the precedent.

If the Federal Government, which is the primary actor and the largest ratepayer, were to come forward, do you think that it would be appropriate for members of the region to increase their funding for this purpose, or do you like things the way they are?

Mr. TANGHERLINI. I will start, and I will say that, whether we think it is appropriate or not, we are going to have to as we try to meet the standard set by EPA and the commitments we have made as a region. I think as you discuss the nitrogen problem, that is a huge problem. It is about a $900 million problem. You can't ignore the CSO problem, as well, which is about a $2 billion problem.

So really as you look at the water quality issues associated with cleaning up the Anacostia and reducing the continued impacts to the Potomac, you really have to look at the two problems combined. Frankly, those problems combined are the result of the infrastructure that we inherited in the District of Columbia. We might have built it differently. Even if we didn't, we think that the Federal Government has some responsibility for that and a broader regional and national goal of maintaining these waterways and enhancing the Chesapeake Bay.

So I think the fact—and I speak for one jurisdiction—this is a commitment we have already made, and we are already committing substantial resources to it.

Ms. NORTON. Yes, but I didn't ask about those resources, because the suggestion was that increased Federal resources in return for

increased local resources, essentially. That is the suggestion. Just like you have decided to do that with respect to Metro.

Mr. TANGHERLINI. And I think, just like we have decided to do with Metro, we will more than likely decide to do here. I don't know what the specifics are.

Ms. NORTON. We don't have any specifics.

Mr. TANGHERLINI. You are just dragging a promise out of me.

Ms. NORTON. No, I am just dragging out how committed you are. In fact, you bring CSO into it. Good, whatever it is, because the Federal Government plays a large role. My job is to push them, and we have been doing that, and we want even more. The question is going to come back on us, OK, what are they going to do that is beyond what they are already doing.

Mr. TANGHERLINI. I think that is reasonable, and I would like to hear the answers to the left of me, but I think the fact is that we are committed to it and it would be great, actually, if that commitment was backed up with a Federal commitment, because that is the one commitment that is missing.

Ms. NORTON. So you say you are contributing more money than the Federal Government is at the moment? Is that what you are saying?

Mr. TANGHERLINI. I think that is fair to say, absolutely, through our ratepayer.

Ms. NORTON. So you are saying at the very least the Federal Government ought to equal what you are now doing?

Mr. TANGHERLINI. Yes, at the very least.

Ms. NORTON. Mr. Griffin.

Mr. GRIFFIN. Congresswoman, Fairfax County, I believe, supports doing what we need to do to clean the Chesapeake Bay, and if that means an increased contribution for our share at Blue Plains, I am sure that my Board would support that. I would just note that Fairfax operates the largest treatment plant in the State of Virginia, and we have not enjoyed the same level of Federal support that Blue Plains has, so that if you are successful in obtaining additional Federal funds on behalf of Blue Plains, if you could expand that to include other treatment plants in the Chesapeake Bay watershed that would be greatly appreciated.

Ms. NORTON. Mr. Griffin, you know the one advantage of being in the Nation's Capital is the big kahuna here is the Federal Government, and that is why you are getting any CSO money in the first place, because the Federal Government is a player here and a ratepayer here.

Now, unless they have that role in Virginia do not expect Uncle Sam to come up with the same kind of piddling funds—I am not very satisfied with what they have here—but I can understand your concern. Certainly through us as the Nation's Capital these funds will reverberate whatever we can get and whatever—I appreciate your testimony—you are willing to do will certainly have its affect on, of course, the masterpiece of the region, the Chesapeake Bay.

Mr. Firestine.

Mr. FIRESTINE. Thank you. Well, obviously, we share the same concerns. WASA has a strong environmental stewardship role here. We understand, and that is why our emphasis on the fact that this

organization and resolving the nitrogen issue is a regional issue and will require resources of the region. Certainly we are willing to commit our share to that.

As you know, there is a fee that was put into place in Montgomery County, at least my county. Maybe you don't know that. That basically goes toward the collection of moneys to help with our share of funding the resolution of this issue, which is also connected to our concern about the financial issue. We know that over time our commitment is going to be greater to this entity to resolve the problems that you mentioned, and that is the reason we want to assure that the fiscal independence does remain there as more resources would flow to resolving this problem.

Ms. NORTON. Dr. Brown.

Ms. BROWN. Yes. In Prince George's County there has been a real concerted effort to make sure that the waterways are clean, both in terms of debris but also chemically and in those kinds of things, working very closely with things having to do with the Anacostia, a commitment from our government to do that.

I think your analogy of WMATA and this, although there are some slight differences, share a fundamental reason for all of the members of the region to contribute. Water knows no boundaries. Water really doesn't. I think it is very foolish of us to assume that the nutrients will stop, or whatever contaminants are will stop here and they won't cross the line because of some manmade or legislative boundary. That makes no sense whatsoever.

And so the commitment to what is necessary is something that would be very seriously considered by the Prince George's County government if we could see that our Federal partners would be stepping up to the plate also in terms of doing their fair share. The headset and the demonstrated commitment to that by action and by resources is already a part of what happens to Prince George's. The three rivers that surround us are critical for us, the Potomac, the Patuxent, and the Anacostia. They are critical.

Ms. NORTON. Thank you, Ms. Brown. I think all of you show a willingness to do our share if we can get the folks up here to finally really do what they have not done for decades. It all certainly helps us.

Could I just have some indication—I don't know if you know, but I indicated in my bill, the Anacostia River Initiative, finally passed. I had it in the WRDA bill, the Water Resources bill. This is very important because it is the predicate for getting more funds for the Anacostia. It says 10-year plan with all of the actors. The Corps is the lead, so you see the Federal Government is deeply implicated, taking the lead.

Within 1 year—I don't have the deadline—from enactment—but it has been enacted several months ago now—the 10-year plan has to come forward. Do you know whether the Corps has reached out to you or any of you with respect to this plan to within a year of enactment of the Anacostia River Initiative, which is a predicate to more money for the Anacostia? Have you had any?

Mr. TANGHERLINI. I haven't been reached out to personally and directly, but that doesn't mean we haven't been reached out to as an organization.

Ms. NORTON. I realize I am talking to the top. Can I ask you to do this, in terms of my own follow-through. Would you within 30 days let us know by addressing this question to the appropriate officials whether or not the Corps is at work? We intend to hold them to this deadline, and particularly in light of your testimony about funding, region willing to do its share, Uncle Sam hasn't done its, can't do anything unless there is a plan. The plan, we put in the bill 1 year so that nobody could skate off of that.

Only a couple more questions.

Mr. Tangherlini, we are told that the new stadium, thrills us all, had environmental issues in mind as it went up. Was it LEED or anything like LEED?

Mr. TANGHERLINI. LEED registered. It has received a LEED certification. I am not sure what level, but it did receive a LEED certification, which makes it the only stadium to have accomplished that.

Ms. NORTON. In the United States?

Mr. TANGHERLINI. As far as I know.

Ms. NORTON. Of course, it is the only one that has been built, but I congratulate you on that. So on the banks of the Anacostia—and you know my concern there—you are about to build on Poplar Point?

Mr. TANGHERLINI. Yes.

Ms. NORTON. Never was intended for development, even more precious than what you have had to do around the stadium. Initially a green area, a National Park Service area, it took every drop of sweat to get that bill out of here. How will you preserve, in light of the massive development that may take place, how will you preserve Reservation 13 and Poplar Point, the environmental, the pristine environmental qualities of these two areas which have now been entrusted to you for which neither the framers nor anyone else ever expected that there would be development of any kind?

Mr. TANGHERLINI. It is an excellent question. I think the District has taken a number of specific actions to improve its environmental stewardship as it seeks development.

In the case of Poplar Point, roughly 35 acres of the 105 that are there would actually be preserved perpetually as open space, and the proposals that have been discussed include a much more aggressive management of that open space than is currently being happened with the National Park Service.

Actually, if you look at the Poplar Point area you will see that a good chunk of the area is actually developed for a Park Service maintenance facility, helicopter landing pad, and police station. There is an old——

Ms. NORTON. That is really a rather small chunk compared to what you are going to do.

Mr. TANGHERLINI. Right. There is the old capital greenhouses there. A piece is actually under the Frederick Douglas Bridge.

With your assistance, we have been moving forward with a proposal to move the Frederick Douglas Bridge and open up some of that land actually for re-redevelopment, if you will, as a park.

So one of the big issues with developing Poplar Point, in particular, is to create a meaningful environmentally sensitive park, as well as then subject the entire development to the new Green

Building Act standards of the District of Columbia, which requires as small a footprint as possible, environmental footprint as possible, on that development. That would also be the case with Reservation 13.

Reservation 13 was, in many ways, the exact opposite of Poplar Point in the sense that it is for the most part paved parking lots without stormwater management on it. That actually could benefit from some kind of investment.

Ms. NORTON. As long as the river, itself, is protected and one doesn't build onto the river and one uses state-of-the-art techniques for making sure that the runoff, which is inevitable wherever people are, doesn't get to the river, making it any worse than it already is, we may have a chance.

I appreciate that answer.

Finally, actually this may be for all of you. You heard the testimony. I asked about water fountains. I believe this is the case, because this was an issue always in the several hearings that we had on contaminated water before. It has to do with schools and fountains. There was credible testimony at these hearings that a lot of that had to do with the fixtures and not with WASA.

We got WASA then, now, and we will always hold them accountable, but how do you know that the water fountain out of which children drink is not really the responsibility of the District of Columbia or counties represented here and not WASA at all, because of lead-based fixtures? Can you tell me that there are not lead-based fixtures, internal fixtures, that children may be exposed to quite apart from anything WASA has done?

Mr. TANGHERLINI. I can't tell you right now which of those fixtures have lead base components to them, but I can tell you this is among the reasons why the Mayor sought the Authority to have direct control over the school system, got it through the Council, and then got it through here on the Hill with your support.

Having that kind of direct accountability so that problems like this can be identified and addressed, and then the Mayor can be accountable for it, is one of the reasons why we have made that a key priority of the administration.

Then you support that. We support that with a $200 million investment in reconstruction of our school facilities, with one of the key components being the replacement of the drinking water infrastructure in those schools.

So that is a key issue that we are looking at as we go forward with the modernization of our entire school facility structure.

Ms. NORTON. I don't know if this has been a problem elsewhere. I won't ask you to run through. This is a special issue for me and my own environmental work. But I have to indicate and to concede, frankly, the primary reason I am concerned about lead in the water has little to do with the average person; it has almost everything to do with children. I do not know of a child who had cancer when I was a young woman, or in college, or having my baby. I didn't know any. I have no recollection of any of these things. They certainly would have come to our attention because it was so rare.

All this does is to confirm that somehow or the other we who are grown may well have escaped what for children now becomes a part of the way in which they are born into this world, that they

are exposed to things that, if you are exposed to it when you are older you may get through it, but there has to be a hypothesis. You begin with that. There has to be a hypothesis that something is happening to younger people. Cancer is no longer merely the old person's disease it was when I was a kid. Children get diseases. I am not talking about people at life's end, at the beginning of life.

One hypothesis may be that maybe those children wouldn't have lived in the first place. But the fact is that they were born and in elementary school and junior high school they get cancer.

When we talk about nitrogen and the other contaminants, we basically, although all of us are exposed, are essentially talking about what we, in order to get the benefits of spending and whatever and the chemicals out of which the entire society is made, have essentially exposed a generation to unheard of diseases at a very young age.

As I take Mr. Siglin's suggestion that maybe we all ought to buckle up and understand that it is going to take some more expenses, I would just urge you to bear in mind that we unknowingly, unwittingly may be forcing off diseases onto younger and younger generations that may have been prevented had we been willing to spend a little more money.

As I close this hearing with the chairman still being fortunate enough to be voting on the floor, I must offer the apologies of the committee, but particularly apologies for myself, who have taken disproportionate amounts of time on other witnesses, and yes, even on you, and may I thank you very much for your testimony. That was indispensable to this hearing.

The hearing is adjourned.

[Whereupon, at 6:30 p.m., the subcommittee was adjourned.]

[The prepared statements of Hon. Tom Davis and Hon. Kenny Marchant follow:]

Statement of Rep. Tom Davis
Ranking Member
Committee on Government Oversight and Reform
District of Columbia Subcommittee
April 15, 2008
Oversight Hearing :District of Columbia Water and Sewer Authority

Thank you Chairman Davis for holding this hearing.

Though not one of the leading tourist attractions in the Nations Capital, the Blue Plains Advanced Wastewater Treatment Plant is the largest such facility in the world. On the banks of the Anacostia River, it is a key to safe, abundant, and inexpensive drinking water, and to a healthy Potomac River and Chesapeake Bay.

In 1996, when I was Chairman of the District of Columbia Subcommittee, local water quality and financial management of its functions were undergoing a crisis of epic proportions. The "boil water alerts" at the time effected us as much in this building as it did the rest of the city. The Clinton White House, through the Environmental Protection Agency and the Department of Justice, were taking strong action against the District of Columbia Government.

Working in a bi-partisan manner, with patience and persistence, the D.C. Water and Sewer Authority was born as a quasi- regional entity. It has done the job it was charged to do. I would count the creation of WASA along with the King Charles Treaty of 1632 and the Inter-Municipal Agreement of 1985 as one of the 3 most significant events in the history of water rights in this region.

WASA was intended to be an independent Authority, and must remain so. Along those lines, last week Representative Chris Van Hollen and I introduced H.R. 5778 to clarify the independent role WASA plays.

I look forward to working with the WASA stakeholders to ensure that the integrity of WASA is maintained, and that it receives the degree of attention that its importance to us requires. Thank you.

Statement of Ranking Member Kenny Marchant
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Oversight Hearing on Water and Sewer Authority
Tuesday, April 15, 2008

Thank you Chairman Davis for holding this hearing. In 1996, when Ranking Member Tom Davis was Chairman of the District of Columbia Subcommittee, landmark legislation was enacted which established the District of Columbia Water and Sewer Authority (WASA). At the time, the Washington, D.C. Region was in the throes of a major crisis in water quality and its financial management. The new independent entity created, WASA, runs the Blue Plains Advanced Wastewater Treatment Plant, the largest such facility in the world. Its biggest customer is the Washington Suburban Sanitary Commission. WASA has been critical to the Anacostia and Potomac Rivers, and the Chesapeake Bay, which is the largest estuary in terms of shoreline in the United States.

The Washington Region, like all areas of the country, has a right to expect clean, safe, abundant, and inexpensive drinking water, and the best practices available for treating sewage.

I understand that WASA was created as an independent entity, and that its enabling law requires the Board to operate separately from local governments. It further appears that there is a conflict between this statute and other laws that have previously been the subject of Memoranda of Understanding, and that a clarifying new federal law may be necessary to resolve ambiguities.

It is always prudent to exercise oversight over laws we enact and entities we create, and I commend the Subcommittee for doing just that today. I look forward to the testimony, and to working with the stakeholders to maintain the regional balance which so many have worked so hard to achieve.

Thank you.

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