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108TH CONGRESS, 2d Session | SENATE | REPORT 108–386

WATER INFRASTRUCTURE FINANCING ACT

REPORT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 2550

TOGETHER WITH

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

OCTOBER 7, 2004.—Ordered to be printed

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C O N T E N T S

	Page
General Statement	1
Background	2
Clean Water Act Program	2
Safe Drinking Water Act Program	3
Need for legislation	4
Objectives of the Legislation	5
Section-by-Section Analysis	5
Section 1. Short title; table of contents.	5
TITLE I—WATER POLLUTION INFRASTRUCTURE	
Sec. 101. Technical assistance for rural and small treatment works.	6
Sec. 102. Projects eligible for assistance.	7
Sec. 103. Water pollution control revolving loan funds.	9
Sec. 104. Affordability.	9
Sec. 105. Water pollution control revolving loan funds.	10
Sec. 106. Transferability of funds.	12
Sec. 107. Grants program.	13
Sec. 108. Costs of administering water pollution control revolving loan funds.	14
Sec. 109. Allocation formula.	14
Sec. 110. Authorization of appropriations.	17
Sec. 111. Reports.	17
Sec. 112. Pilot program for alternative water source projects.	17
Sec. 113. Wet weather grants.	18
Sec. 114. Technical correction.	18
TITLE II—SAFE DRINKING WATER INFRASTRUCTURE	
Sec. 201. Technical assistance for small centers.	18
Sec. 202. Labor standards.	19
Sec. 203. Preconstruction work.	19
Sec. 204. Affordability.	20
Sec. 205. Safe drinking water revolving loan funds.	20
Sec. 206. Grants program.	22
Sec. 207. Other authorized activities.	23
Sec. 208. Small system revolving loan funds.	23
Sec. 209. Authorization of appropriations.	24
Sec. 210. Removal of lead from drinking water in schools and in the District of Columbia.	24
Sec. 211. Small public water system assistance program.	28
Sec. 212. Small public water system assistance program.	30
TITLE III—MISCELLANEOUS	
Sec. 301. Definition of Administrator.	31
Sec. 302. Demonstration grant program for water quality enhancement and management.	31
Sec. 303. Cost of service study.	33
Sec. 304. State revolving fund review process.	34
Sec. 305. Southeast Colorado safe drinking water supply.	34
Sec. 306. Assessment of perchlorate contamination.	35
Sec. 307. National estuary program.	35
Sec. 308. Sewage control technology grant program.	36
Sec. 309. Special water resources study.	36
Legislative History	38
Hearings	38
Rollcall Votes	40

Page
Regulatory Impact Statement 42
Mandates Assessment 42
Appendix 43
Letter, Association of State Drinking Water Administrators 43
Letter, Rural Community Assistance Program 46
Memorandum, United States Environmental Protection Agency 52
Cost of Legislation 54
Additional Views of Senators Jeffords, Baucus, Reid, Graham, Lieberman, Wyden, Carper, and Clinton 58
General Statement 58
Background 58
Discussion 59
Summary of Issues 61
Davis Bacon 62
Clean Water Act 62
Safe Drinking Water Act 63
Lead in Drinking Water 64
EPA Regulations on Lead in Drinking Water 64
Washington D.C. Experience 66
Committee Action 66
Committee Mark-Up of S. 2550, June 23, 2004 68
Deference to Local Governments 72
Incentives for Compliance 74
Grants 75
CWA Funding Formula 76
Project Authorizations 76
Additional Views of Senator Jeffords 79
Letter, from Hon. Jon Kyl, U.S. Senator from the State of Arizona 79
Changes in Existing Law 80

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WATER INFRASTRUCTURE FINANCING ACT

OCTOBER 7, 2004.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 2550]

TOGETHER WITH

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2550) to amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States, having considered the same reports favorably thereon with amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT

S. 2550 is a bill which amends the Federal Water Pollution Control Act (CWA) and Title XIV of the Public Health Service Act (Safe Drinking Water Act) to reauthorize the State Revolving Loan Funds (SRF) in each Act. The bill also creates a research and demonstration program to develop new water and wastewater treatment approaches and technologies; authorizes a study of the nation's water resources and creates several targeted grant programs to address specific water and wastewater problems.

39–010

BACKGROUND

Clean Water Act Program

Enacted in 1948 and comprehensively amended in 1972, 1977, 1981 and 1987, the CWA governs the discharge of pollution into the nation's navigable waters. The 1972 amendments strengthened the Federal construction grants program (Title II) through which the Federal Government provided grants to municipalities to construct publicly owned wastewater treatment plants (POTWs). The Federal share of the projects was increased from 55 percent to 75 percent of the total project cost. Five years later, in 1977, Congress increased the role of States in managing the construction grants program and provided new incentives to address wastewater needs with innovative or alternative treatment technologies. Congress continued to transition the program to the States by returning the Federal cost share to 55 percent in its 1981 amendments to the Act.

However, by 1987 concerns remained about how best to fully transition the program to one primarily funded by the States and local governments. As such the 1987 amendments further reformed the way the Federal Government assisted local governments in meeting the costs of water infrastructure projects. Recognizing a need to extend the life of each dollar in the system, Congress adapted an innovative approach, called the State Revolving Loan Fund (SRF) through which States would receive an annual grant with which they would capitalize revolving loan funds. Once a town repaid a loan, the money could then be loaned again to another community. The construction grants program was phased-out over the next 5 years giving States ample time to get their SRFs fully operational. The authorization for the construction grants program ended in 1990. The authorization for the SRF ended in 1994, after a sharp decline in its authorization level from $1.2 billion in 1993 and $600 million in 1994. This decline and eventual elimination of the authorization level is a clear signal that Congress intended for the Federal contribution to end and for the States and localities to assume full responsibility for the cost of building their treatment works.

The 1987 amendments also created an allocation formula according to which States would receive their annual share of the Federal appropriation. The formula gave each State a prescribed percentage that except for a few minor adjustments in the 1990's to account for the end of financing to three of the U.S. territories has remained the same for the past 17 years. There is growing concern that the current formula is no longer reflective of which States have the greatest need for infrastructure funds.

In order to receive their share of the Federal pot of money, each State signs a capitalization agreement with the Environmental Protection Agency (EPA) which includes a commitment to match 20 percent of the Federal grant. States are further required to create a priority list of projects that are eligible for funding using criteria chosen by the State. The State is not required to fund according to the order projects appear on the list largely because at any one time a particularly large project may not have the local funds in place. Further, a State may place those projects along a particular

water body highest on its priority list but would still need to provide funds to projects with perhaps great local importance, but less statewide significance. The loans are available at market rates or below and must be repaid within 20 years, the typical life of a treatment works. Congress envisioned States providing loans expeditiously but also leveraging some of money to gain interest and grow their individual funds.

Currently, POTWs, projects contained in a State's nonpoint source pollution plan (section 319) and projects contained in a State's estuary comprehensive, conservation and management plan (section 320) are eligible for funding. States have provided $1.7 billion for nonpoint source projects and estuary-related projects. The Clean Water Act and some State laws do not allow privately owned treatment works to access the SRF.

Safe Drinking Water Act Program

In 1974, Safe Drinking Water Act (SDWA) was first enacted as an amendment to the Public Health Services Act through which the EPA had previously regulated contaminants in drinking water. The Act was substantially amended in both 1986 and 1996. The 1974 law provided the EPA with authority to regulate drinking water contaminants while providing the States with authority over the implementation and enforcement of the EPA established standards. The Public Health Service Act required the regulation of 22 contaminants. In 1986, Congress amended SDWA to require the EPA to issue regulations for 83 other contaminants by June 1989 and 25 others every 3 years thereafter. The EPA was also required to publish regulations for the disinfection and filtration of public water supplies.

Because the EPA, the States and public water systems had difficulty with the requirements of the 1986 amendments, Congress again amended SDWA in 1996.[1] Congress replaced the requirement that the EPA regulate 25 contaminants every 3 years with a requirement that beginning in 1998 and each 5 years thereafter, the EPA publish a list of contaminants that may need to be regulated and beginning in 2000 and each 5 years thereafter determine whether or not to regulate five of those contaminants. Concern over how communities, particularly small systems, would pay to meet these requirements and upgrade their systems lead Congress to duplicate the Clean Water SRF with the Drinking Water SRF.[2] Similar in many ways to the Clean Water SRF, the Drinking Water SRF provides communities with access to a State managed loan program. However, Congress took this opportunity to improve upon the SRF structure with many changes not included in the Clean Water program that were designed to increase State flexibility. To begin, to address the needs of disadvantaged communities, the SDWA provides States with authority to provide negative interest loans and principal forgiveness for disadvantaged communities through the Drinking Water SRF and give these disadvantaged

[1]Senate Report 104–169 accompanying Safe Drinking Water Amendments Act of 1995. Page 10.

[2]Ibid, pages 11–12.

communities 30 years to repay the loan. The Drinking Water SRF's authorization of $1 billion expired in 2003.

Similar to the clean water program, States must also create a priority list but are required to fund in order with a "ready-to-proceed" exception so that State programs do not sit idle if the project at the top of its list is delayed in getting the local share of financing in order. States are required to give first priority to those projects which address the most serious risk to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. The States are required to match 20 percent of the annual Federal capitalization grant. Private utilities are eligible for the Drinking Water SRF.

The SDWA also distributes money to the States based on a formula. However, unlike the clean water formula, the drinking water formula changes every 4 years with the publication of EPA's drinking water needs assessment, mandated by the Safe Drinking Water Act. States are required to document and submit to EPA the funding requirements for their communities to meet the costs of the Act. EPA then determines what percent of the nationwide need each State has. The formula for the distribution of Federal funds is the State's percent of the nationwide need adjusted to ensure that those States with less than 1 percent of the nationwide need, receive 1 percent of the funding. This amount would assist small States, which otherwise might not receive enough funds to provide adequate assistance to their communities, in maintaining viable programs.

Need for legislation

The SRFs have been very successful in dispersing assistance to POTWs and PWSs throughout the country. The State Clean Water SRFs have funded $43.5 billion since their creation providing more than 14,000 loans to communities across the country. It is important to note that some of these projects are initiated and implemented by nongovernmental entities that may experience difficulty in some States in applying for and receiving SRF funds. The Drinking Water SRF has provided 1,776 loans totaling over $3.8 billion. Of this amount, $1.5 billion went to assist systems that serve fewer than 10,000 households. However, the need for infrastructure dollars continues to grow and according to several studies, outpaces what the Nation as a whole spends.

The Environmental Protection Agency (EPA) conducts two surveys, every 4 years, of the States' water and wastewater needs. According to the two most recent needs surveys for water (2001) and wastewater (2002), EPA estimates the nationwide need to be $331 billion over 20 years. There are also several independent analyses of the "gap" between what the Nation as a whole currently spends on infrastructure and what the Nation needs to spend. In 1999, the Water Infrastructure Network, a consortium of water and wastewater providers, researchers, environmentalists, engineers and product manufacturers, released a study claiming the annual need is $23 billion.[3] The Congressional Budget Office released a gap

[3] *Clean and Safe Water for the 21st Century*; Water Infrastructure Network. 2000. page ES–1.

analysis in which it concluded the gap for wastewater ranges, depending on various financial and accounting variables, from $23 billion to $37 billion per year and the gap for drinking water ranges from $25.5 billion to $39.3 billion per year.[4] The EPA also conducted a gap analysis, separate from the various needs surveys, in which it said the gap ranged from $3 billion to $26.7 billion a year.[5] It is important to note that these numbers reflect the gap in both capital construction costs and operations and maintenance costs, the latter of which the Federal Government does not fund. Operations and maintenance are the responsibility of the local utility.

While it remains the committee's intent to fulfill Congress' 1987 CWA goal and turn this program entirely over to the States, the committee, for the second consecutive Congress, has acknowledged that the nationwide need continues to far outpace the amount of funding that is available from all levels of government. Therefore, the committee and the Congress has maintained a commitment to fund the programs until the SRFs revolve at levels sufficient to meet the needs of local communities. For instance, in 1995, when appropriations were supposed to cease, the Clean Water SRF received $1.2 billion, double the previously authorized level. The lowest amount of funding it received was $625 million in 1997. Since the expiration of the Act's authorization in 1994, annual appropriations have fluctuated. In the past several years, annual appropriations have stayed around $1.35 billion. However, this amount and the $850 million annually provided to the Drinking Water SRF are not sufficient. Each level of government—local, State and Federal—must assess what it is currently contributing, add to the available funds, and determine how to increase efficiencies in their systems to make the most of the funds in the system.

OBJECTIVES OF THE LEGISLATION

S. 2550 seeks to update the two State Revolving Loan Funds (SRF), which are the primary Federal funding mechanisms for clean water and drinking water. Both SRFs are expired and in need of moderate updating. The Clean Water SRF lacks many of the flexibility mechanisms that are currently a part of the drinking water program. The bill also seeks to promote the research and development of new ways of meeting water quality goals through a research and demonstration pilot program. Finally, the bill would help communities meet the costs associated with many regulatory requirements by providing limited and directed grant assistance.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table Of Contents.

This section designates the title of the bill as "Water Infrastructure Financing Act" and lists the table of contents.

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[4]U.S. Congressional Budget Office. "*Future Investment in Drinking Water and Wastewater Infrastructure.*" 2002. page x and 11.

[5]The U.S. Environmental Protection Agency. "*The Clean Water and Drinking Water Gap Analysis.*" 2002. page 43.

TITLE I—WATER POLLUTION INFRASTRUCTURE

Sec. 101. Technical assistance for rural and small treatment works.

Summary

This section adds Section 222 to the Clean Water Act in which it defines "Qualified Nonprofit Technical Assistance Provider" as a qualified nonprofit technical assistance provider of water and wastewater services to rural communities of 10,000 users and fewer.

Section 222(b) will create a grant program through which the Administrator may make grants to qualified nonprofit technical assistant providers to:

(A) Assist small POTWs in planning, developing and obtaining financing for eligible projects, defined in section 603(c) of the Clean Water Act;

(B) To capitalize revolving loan funds, in consultation with the State, to rural and small municipalities for predevelopment costs, including costs for planning, design, associated preconstruction, and necessary activities for citing the facility and related elements, or short-term costs incurred for equipment replacement that is not part of a regular operation and maintenance activities. Loan terms cannot exceed 10 years and loans cannot exceed $100,000. Loan repayments will be credited to the fund maintained by the qualified nonprofit;

(C) Provide technical assistance and training for rural and small POTWs and decentralized wastewater treatment systems to enable them to protect water quality and achieve and maintain compliance with the Act; and

(D) To disseminate information to rural and small municipalities with respect to planning, design, construction and operation of POTWs and decentralized wastewater treatment systems. The Administrator shall to the maximum extent practicable ensure that grants are made available in each State. The nonprofit provider will submit a report to the Administrator detailing the number of communities served, the sizes of those communities and the types of financing provided by the nonprofit provider.

Section 222(c) will authorize $25 million for each fiscal year 2005 through 2009.

Discussion

According to EPA, more than 70 percent of the nation's housing units with inadequate plumbing are in small communities. More than 19 million households in small communities are on septic systems or cesspools as their primary source of treatment.[6] The 2000 EPA Clean Watersheds Needs Survey indicates that small systems, those serving fewer than 10,000 households, represent about 10 percent of the nationwide funding need, or $16 billion. 74 percent of wastewater treatment systems serve small communities which accounts for only 12 percent of the nation's population. While the

[6]The U.S Environmental Protection Agency, "*Wastewater Treatment Programs Serving Small Communities.*" (EPA 832-R–02–004.) December 2002. Page 1.

needs of these communities are great, the ability of their ratepayers to pay the costs of those needs is limited.

The Environmental Protection Agency has several existing programs aimed at helping small systems and unsewered communities maintain and upgrade their systems. The National Environmental Training Center for Small Communities develops and delivers training courses for both POTWs and drinking water systems operators. The National Small Flows Clearinghouse provides information about treatment options and the Operator On-Site Technical Assistance Program (section 104(g) of the Clean Water Act) provides compliance assistance to small POTW operators as well as help with maintenance and financing.

The committee however continues to hear of a need for additional assistance for these small systems. In a letter to the committee on February 5, 2004, the Rural Community Assistance Program cited the need for assistance with predevelopment costs. Many small POTWs cannot afford the costs associated with planning a project, including the engineering costs. Without these initial steps completed, the POTW often has difficulty applying for an SRF loan to begin construction. The Rural Community Advancement Program, for example, runs several small SRFs in States to assist small POTWs with these startup costs, enabling them to then apply for funds through the State-run SRF for construction costs. Section 101 enables the Administrator to provide money to nonprofit technical assistance providers to create and run these smaller SRFs. This section also provides nonprofit technical assistance providers with funds to assist treatment works in identifying and securing financing for projects; provide technical assistance to operators of systems on how to best manage their POTW and meet regulatory requirements. It also authorizes funds for the dissemination of information on financing, system management and water quality for small systems.

Sec. 102. Projects eligible for assistance.

Summary

This section amends Section 603(c) of CWA by modifying the project eligibility list with several changes. 102(c)(1) mandates projects comply with Section 513, which requires payment of a prevailing wage to all workers on a Federal construction project.

Section 102(c)(2) establishes that funds can be used only to provide assistance to a municipality, intermunicipal, interstate or State agency, or private utility that principally treats municipal wastewater or domestic sewage for construction, including costs of planning, design, associated preconstruction and necessary activities for citing the facility and related elements of a treatment works; implementation of management program under Section 319; development and implementation of a management plan under section 320; water conservation projects, the primary purpose of which is to protect, preserve or enhance water quality, including piping and lining of irrigation canals, recovery or recycling of wastewater or runoff from irrigation, irrigation scheduling, measurement or metering of water use; or improvement of on-field irrigation efficiency; projects by a municipality intermunicipal, interstate or

State agency to increase security at a POTW, excluding operation and maintenance costs; to control municipal stormwater runoff; and reuse, reclamation or recycling projects the primary purpose of which is the preservation, protection or enhancement of water quality.

Discussion

Section 513 of the Clean Water Act applies Davis Bacon prevailing wage standard to all federally funded grant programs created within the Clean Water Act. Section 602 of the Act defines the terms under which the SRFs will function. As stated in 602(b)(6), Davis Bacon applies to those projects funded in whole or in part by "funds directly made available by Federal capitalization grants." The statute clearly required Davis-Bacon to apply only to the first distribution of funds because the first loan is the only one made directly available from the capitalization grants. State law would guide subsequent "revolutions" of the money - loans made from repaid loan funds. As Senator George Mitchell, the bill manager, stated on the floor during consideration of the 1987 amendments, "This restriction [meaning Davis Bacon and others] on the use of Federal capitalization grant funds does not apply to funds contributed by the State . . . moneys repaid to the fund or other money."[7]

Section 602 also states that Davis Bacon and several other provisions of the law apply only to those treatment works constructed prior to September 30, 1994. Along with Davis Bacon, 15 other provisions of the old Title II construction grants program were applied to the SRF until September 30, 1994. When the program's authorization expired, so did EPA's authority to continue to require States to apply any of these provisions to their programs. Section 102(c)(1) of S. 2550 for the first time imposes Davis Bacon on every project funded through the SRF regardless of whether it is from the initial capitalization grant or subsequent rounds of loans.

By clarifying that preconstruction activities are eligible for funding, Section 102(c)(2) ensures treatment works are able to receive financing for engineering costs and other planning costs that precede actual construction. This provision will ensure that small communities with few resources available to develop a project in its early stages can receive assistance for pre-construction activities.

This provision maintains current law eligibility of both section 319 and section 320 projects.

It would extend eligibility to privately owned treatment works. These systems are currently not eligible for assistance through the SRF.

It also would extend eligibility to water conservation projects, the primary purpose of which is the protection, preservation or enhancement of water quality. While typically seen as a problem for western States, water supply has become a nation-wide concern. One aspect of the problem is the lack of a clean water supply not just the lack of water in general. This provision envisions enabling States and localities to fund water conservation, reuse, recycling

[7]U.S. Congress. Committee on Environment and Public Works. *"A Legislative History of the Water Quality Act of 1987 (Public Law 100–4) Including Public Law 97–440; Public Law 97–117; Public Law 46–483; and Public Law 96–148."* Senate Report 100–414. Page 375.

and reclamation projects that will enhance the supply of clean, safe water.

After the terrorist attacks of September 11, much attention is being paid to security at the nation's treatment works. While EPA currently allows POTWs to use the SRFs for security-related costs, this provision would state the eligibility in statute, clarifying that in fact capital costs are eligible. Security costs associated with operations, maintenance and personnel are not eligible for the SRF.

Finally, with finalization of the stormwater Phase II regulations (64 FR 68721), municipalities across the country face additional expenses trying to reduce and mitigate contaminated stormwater. Because there has been some confusion over whether these projects are eligible for SRF funding, this provision clarifies that these costs are in fact eligible for SRF loans.

Sec. 103. Water pollution control revolving loan funds.

Summary

This section amends the types of assistance that can be offered through the SRF to include a revolving loan fund operated by a municipal, intermunicipal or interstate entity, State, public or private utility, corporation, partnership, association, or nonprofit agency to fund projects that are part of a 319 or 320 implementation. The loans must be fully paid within 30 years of their issuance.

Discussion

Projects included in a State's estuary and nonpoint source implementation plans can often most effectively be implemented by small, nonprofit organizations which traditionally have had difficulty accessing State SRFs. The loan process is often better suited for governmental entities than small, local, watershed organizations. By allowing an entity to operate a smaller SRF, this provision seeks to make it easier for locally based watershed organizations to receive funding to fulfill the objectives of a State approved 319 or 320 project.

Sec. 104. Affordability.

Summary

This section amends Section 603 by adding a subsection (e) which includes a series of flexibility mechanisms designed to improve assistance provided to disadvantaged communities and increase the flexibility offered to States. These provisions are similar to provisions already in existing law in the SDWA.

Section (e)(1) defines "disadvantaged community" as a service area, or portion of a service area that meets State affordability criteria,

Section (e)(2) provides the State with authority to provide additional subsidization, including principal forgiveness, to a disadvantaged community or one the State expects to become disadvantaged as a result of a project.

Section (e)(3) limits the total loan subsidy to no more than 30 percent of the State's annual capitalization grant.

Section (e)(4) allows the State to extend the life a loan from the current statutory limit of 20 years to 30 years but not to exceed the expected design life of the facility.

Section (e)(5) authorizes the Administrator to publish information to assist States in establishing affordability criteria.

Discussion

Tom Morrissey, President of the Association of State and Interstate Water Pollution Agencies testified on February 28, 2002, "States strongly support principal forgiveness." This section takes principal forgiveness and other flexibility mechanisms proposed from the Safe Drinking Water Act and applies them to the Clean Water program. These flexibility mechanisms provide the State with the ability to provide additional assistance to disadvantaged communities, such as forgiveness of their loans or zero-interest loans. It also allows the State to provide a 30-year loan instead of the current 20-year loan, provided the loan does not exceed the life of the asset. New to both SRFs is the ability of the State to provide these additional benefits to communities that may not meet a State's criteria for a disadvantaged community as a whole, but may have a "portion of a service area" that does meet the criteria. Many large cities do not qualify as disadvantaged under their State's definition of the term because they have pockets of low-income ratepayers and industry and pockets of affluent ratepayers. Under Section 204(b) of the CWA, POTWs are prohibited from raising rates on one sector of ratepayers, i.e. industry, in order to offset a cut in rates to another sector, i.e. residential if the facility has ever received Federal grant money. Most of today's treatment works were funded at least in part with Title II construction grant dollars. Further, it is often politically difficult to raise rates only on those people with a proven ability to pay. In order to assist cities struggling to pay for infrastructure upgrades without imposing too high a burden on their low-income ratepayers, this provision makes them eligible for disadvantaged assistance.

Sec. 105. Water pollution control revolving loan funds.

Summary

This section amends section 603(h) of the Clean Water Act.

Section (h)(1) adds several definitions including: "Restructuring" as the consolidation of management functions or ownership with another facility or the formation of cooperative partnerships; and "Traditional Wastewater Approach" as a managed system used to collect and treat wastewater from an entire service area consisting of collection sewers, a centralized plant using physical or chemical treatment processes, and a direct point of discharge to surface water.

Section h(2)(A) requires States to amend their existing priority system so that projects would be more likely to receive assistance by submitting such other information as determined by the State, and:

(i) An inventory of assets, including a description of those assets

(ii) A schedule for replacement of those assets

(iii)A financing plan indicating sources of revenue

(iv)A review of options for restructuring the treatment works

(v) A review of options for approaches other than traditional wastewater approach that may include actions or projects that treat or minimize sewer or urban storm water discharges including decentralized or distributed storm water controls, decentralized wastewater treatment, low impact development technologies, stream buffers, wetland restoration and actions to minimize the amount of and direct connections to impervious surfaces.

Section h(2)(B) requires States to, in the development of the priority system, take into consideration appropriate chemical, physical and biological data that the State considers reasonably available and of sufficient quality

Section h(2)(C) requires the States to provide for public notice and opportunity to comment on the priority system and list

Section h(2)(D) requires the State to publish, not less than biennially, a description of the projects in the State that are eligible for assistance including each project's priority ranking and the funding schedule; and

Section h(2)(E) requires the State to ensure that projects are designed to achieve the optimum water quality management, consistent with the public health and the requirements of the Act.

Discussion

Current law requires States to establish a list of projects that are eligible for, and have submitted applications for, funding. The State then provides SRF funds to as many projects on the list as it can with the available funds. As a State puts together its priority list, it can assign priority based on whatever system the State develops to meet its needs. Section 105 of S. 2550 would require the States to add other factors to their system for determining priority. The decision on how much weight to give each of these additional factors is left to the State. A State may choose, for example, to give the most priority points to systems that serve under 10,000 households or who have a median income below the poverty level even though S. 2550 does not refer to these criteria. However, the factors listed in this section must be used to give a project higher priority when determine which projects to fund in a given year from a State's priority list.

The factors to which a State must give additional weight include an inventory of assets, including a description of the condition of those assets and a schedule for replacing those assets. Aging systems are significant contributors to the infrastructure-financing gap. 27 percent of drinking water utilities and 31 percent of wastewater utilities did not have plans for managing their existing capital assets.[8] According to a 2002 General Accounting Office (GAO) report, GAO found that "roughly half of the utilities actually rehabilitated or replaced 1 percent or less of their pipelines annually" even though 89 percent of drinking water utilities and 76 percent of wastewater utilities believed a higher level was necessary to maintain their systems.[9] In order to fully understand the scope of the problem the Nation faces, there must be an accounting of the

[8]U.S. General Accounting Office. *Water Utility Financing and Planning.* (GAO–02–764). August 2002. Page 7.

[9]Ibid, page 42.

health of our utilities. Further, if utilities are to make maximum use of the funds available, it makes good business sense to have a full understanding of the condition of one's assets and how much capital will need to be raised to replace those assets and over what amount of time.

Additional factors include a financing plan indicating how that capital will be raised including rate increases, grant assistance, bonds, loans or other sources. In its 2002 report, of the utilities surveyed, GAO found that 85 percent of drinking water utilities and 82 percent of wastewater utilities were able to cover operations and maintenance costs through local user fees. However, an estimated 29 percent of the utilities had to defer maintenance because of insufficient funding.[10] Providing additional weight to projects that have these elements in place will encourage those utilities that don't have them, to create asset management and financing plans. The committee hopes giving these elements additional weight will also result in those utilities that already have them in place to review their plans and take whatever steps necessary to update them and if necessary, seek additional funding to properly maintain their systems.

POTWs will also receive additional credit if they have reviewed options for restructuring their treatment works. It some cases, it may be more efficient and cost effective for a utility to consolidate with a neighboring one, develop a partnership with the local energy provider, or consider other cooperative partnerships like public-private partnerships or privatization. These are all encompassed in the term restructuring, the goal of which is to improve upon the management and financial structure of a utility to ensure it is operating as efficiently and cost-effectively as possible.

POTWs are also encouraged to look at nontraditional approaches, including decentralized or distributed storm water controls, decentralized wastewater treatment, low impact development technologies and stream buffers. Communities are experimenting with approaches other than traditional treatment and constructed conveyances to reduce contaminated runoff, reducing the amount of water entering a treatment works or adjoining waterways. These approaches may, in addition to possibly being more environmentally friendly than concrete and pipes, be more affordable. Particularly in small, rural communities, properly maintained decentralized wastewater treatment systems may also be an affordable alternative to a treatment works.

Sec. 106. Transferability of funds.

Summary

Each year the Committee on Appropriations in the appropriations bill for Veterans' Affairs, Housing and Urban Development and Independent Agencies includes a provision allowing States to transfer portions of a State's capitalization grant from one SRF to the other and back again. Section 106 permanently extends the authority to transfer no more than 33 percent of a State's Clean Water capitalization grant into the Drinking Water SRF. It clarifies that the funds transferred cannot be considered by a State to

[10]Ibid, page 6.

meet its SDWA requirement to match the Federal capitalization grant for the Drinking Water SRF by 20 percent.

Discussion

This section provides the States with much needed flexibility to manage their water programs holistically. In any one year, a State may have a particularly large drinking water or clean water project for which it needs additional funds. This provision allows them to transfer some money from one account to the other while protecting the corpus of the funds.

Sec. 107. Grants program.

Summary

This section creates a new provision in the CWA, 603(k) that directs a State to set aside a portion of its SRF for grants to eligible projects under the following conditions:

(k)(1) Requires States, in any year in which appropriations do not exceed $3 billion, to set aside 10 percent of its capitalization grant. The grants cannot exceed 55 percent of the project cost. This section allows the State to waive this set-aside if the average time for processing loan applications during the preceding 12 months does not exceed 90 days.

(k)(2) Requires the States, in any year in which appropriations exceed $3 billion, to set aside not more than 10 percent nor less than 5 percent of its revolving loan fund

Discussion

By including a grant component within the SRF, this section seeks to keep the Nation focused on the SRFs as the primary funding mechanism for clean water. The bill acknowledges there is a growing interest in providing POTWs with grant funds to help meet those costs associated with Federal regulatory mandates. The daily costs associated with operations and maintenance continue to be a local responsibility with the Federal assistance available for capital improvements through the SRF program.

This section would require the States to provide a portion of their SRFs as a grant to local communities. By maintaining a single funding source, rather than creating a new, competing program, the focus remains on the SRF and the need to ensure it receives adequate funding to meet the needs of local communities. The small amount of the set-aside, ensures that the corpus of the fund is protected well into the future by devoting the vast majority of funds to the loan program. Further, by incorporating the grant into the SRF, funding for the grant portion is more likely to be appropriated as the Clean Water SRF is a program that regularly receives annual appropriations. Whereas Congress has authorized grant programs that have not received actual appropriations, the SRF annually receives funding and the linkage to the grant program ensures that the grants too will receive funding.

Another goal of this section is to provide a quick infusion of grant funds to communities. The bill allows States to waive the requirement to set-aside 10 percent of the capitalization grant if appropriations do not exceed $3 billion if the State improves the time it

takes to process the loan applications. The time it takes to receive funding through the SRF is a prominent complaint by municipal recipients and one the committee was urged to address by the Paul Pinault, President of the Association of Metropolitan Sewerage Agencies on February 28, 2002 during his testimony before the Fisheries, Wildlife and Water Subcommittee. This too would ensure that funds become available more quickly than under the current system. With the incentive of avoiding a Federal mandate on the use of their SRF funds, the committee believes States will have an incentive to increase the speed of their loan application process.

Sec. 108. Costs of administering water pollution control revolving loan funds.

Summary

This section increases the percentage of funds a State is authorized to set-aside for program administration from 4 percent to 6 percent.

Discussion

States incur significant costs administering the SRFs, a responsibility given them by Congress in the 1987 amendments to the CWA. While the committee does not anticipate that the requirements in this bill will result in new administrative burdens to the States, with the intended increase in appropriations authorized by this bill to the program, it is reasonable to allow States to reserve a larger, but still small, percentage of the SRF to pay their administrative costs.

Sec. 109. Allocation formula.

Summary

This section creates a new allocation formula. It creates several definitions.

(1) Defines the base formula as the current formula outlined in section 205(c)(3) of the CWA.

(2) Defines the needs survey as that conducted by EPA under section 516(2).

(3) Defines the "needs survey percentage" as what percent of the nationwide need for Categories I through VII of the most recent needs survey an individual State's need is.

(4) Defines the "next needs survey" as that occurring after the 2000 needs survey, the most recently completed survey.

(5) Defines a "State" as a State, the District of Columbia and the Commonwealth of Puerto Rico.

Section 109(b) lays out the new formula first by requiring the Administrator, before dispersing funds to the States, to set-aside 1.5 percent of the annual appropriation for Indian tribes, as defined in section 518(c) of the CWA. The Administrator is also required to take 0.25 percent of the annual appropriation for the territories of the United States.

Section 109(b)(4)(A) establishes a target allocation for all States. The target for those States for which the needs survey percentage is less than 1 percent, shall be 1 percent. The target for those

States for which the needs survey percentage is greater than 1 percent, shall be the needs survey percentage.

Section 109(b)(4)(B)-(D) Sections 109(b)(4)(B)-(D) establish a transition period during which the allocation to each State (which is a percentage of the whole) begins moving from its current level to its target allocation. During this transition, States fall in three groups as follows. First, States with a target allocation of 1 percent receive successively higher amounts each year from fiscal year 2005 to 2009 and then remain flat (provided in subparagraph (B)). Second, States with larger target allocations that meet criteria for large, continuing needs (provided in subparagraph (C)) maintain their allocation and, in cases of large growth in needs, receive additional money described in subparagraph (D). Third, States with target percentages higher than 1 percent but that do not meet the criteria for large, continuing need receive immediately their needs survey percentage, and in cases of large growth in needs, receive additional money as described in subparagraph (D).

Specifics of the transition follow. Section 109(b)(4)(B) provides that each State with a target percentage of 1 percent is limited in the growth of its allocation between its base formula and 1 percent as follows: in 2005, these States can rise only 12 percent; in 2006, 16 percent; in 2007, 20 percent; in 2008, 24 percent; and in 2009 and each year thereafter, 28 percent above the base formula allocation. These limits on growth release once appropriations reach $3.15 billion because at that level all States receive a larger amount of money by their target allocations than current appropriations provide by their current allocation. For those States with a needs survey percentage of greater than 1 percent, the growth in allocation relative to the base formula is limited to zero during the transition, but some of these States receive additional funds as described in subparagraph (D).

Section 109(b)(4)(C) provides that States will receive at least their current dollar amount allocation if their needs survey percentages are 1 percent or less or if they meet one of three criteria indicating large, continuing needs. The criteria indicating large, continuing needs are higher needs in both categories V and VII between the previous and current needs surveys, growth in population between the 1990 decennial census and the 2000 decennial census, or have a population equal to 4 percent of the total national population as reported in the 2000 decennial census.

Section 109(b)(4)(D) provides additional funds to States reporting large growth in needs. Subparagraph (D) defines large growth in needs as a report of higher needs in both dollar terms and as a percentage of nationwide need. Such States receive extra funds when annual appropriations are less than $1.38 billion. When annual appropriations exceed $1.38 billion, subparagraph (D) extends provision of additional funds also to those States with large, continuing needs as described in subparagraph (C), regardless of whether those States also reported large growth in needs.

Section 109(f) allows States to reserve the greater of 2 percent of $100,000 for statewide water quality planning.

Discussion

The formula recognizes that in order for the Nation to address the overall national need, each State will continue to need at least the amount of its current allocation. The formula also recognizes that some States receive allocations so small as to be negligible for developing new infrastructure. The underlying policy statement of the formula is that allocations should be determined by each State's percentage of need in the latest Needs Survey with no State receiving less than 1 percent of the total.

To shift from the current allocation to the target allocation under the Needs Survey - while simultaneously continuing to address the overall national need - the allocation to small States must increase while larger allocations cannot shrink. The formula reconciles this dilemma by limiting the growth in allocation to all States first until small States begin to grow, and then until appropriations rise to a level at which all States grow.

To limit growth of all States and limit losses rationally, the formula recognizes three special situations:

1. States receiving allocations so small as to be negligible for developing infrastructure (defined as States whose reported needs are 1 percent or less of the national total). These States are the first to see their allocations grow, but by no more than 12 percent in 2005, 16 percent in 2006, 20 percent in 2007, 24 percent in 2008, and 28 percent in 2008 and thereafter.

2. States that have been receiving larger allocations and whose reported needs continue to grow significantly (defined as having risen both in dollar terms and as a percentage of the total need of the nation). Allocations to these States rise by small amounts which will vary by State.

3. Other States that have been receiving larger allocations and that, although not reporting significant growth in needs, are nevertheless large States or those with particular needs to correct combined sewer overflow problems and non-point source pollution (defined as States that either report higher needs in Categories V and VII, or whose population grew 10 percent or more in the last census, or whose population is at least 4 percent of the national total). Allocations to these States do not shrink. If annual appropriations grow by $30 million, reaching $1,380,000,000, then States in situation 3 begin to share in the nominal growth previously provided only to States is situation 2.

To resume growth in all allocations as soon as possible and to maintain the transition to the allocation targets, the formula changes over time as follows. First, upon publication of the next Needs Survey, the new needs numbers will become the basis for the formula - therefore, States that grow significantly will fare better under the formula. Second, the limits on growth and loss will fall away when appropriations reach $3,150,000,000. At this level, the remaining formula will allocate based entirely on the needs survey with a 1-percent floor.

Consistent with annual appropriations language, the formula requires the Administrator to reserve 1.5 percent of the annual Federal appropriation for the nation's Indian tribes. It also sets aside 0.25 percent for water quality needs of the U.S. territories.

Under Section 205(j) of the CWA, the Administrator could reserve up to 1 percent or $100,000, whichever was greater, of funds allocated to States under the construction grants program for water quality management planning. Projects could include identifying cost-effective and locally acceptable facility and nonpoint measures to meet water quality standards; developing an implementation plan for the measures described above; determining the cause of water quality problems and determining those POTWs which should be constructed with assistance through the grants program. This section of the S. 2550 allows the States to reserve up to 2 percent or $100,000, whichever is greater to meet the purposes of 205(j) and Section (303)e) of the CWA. 303(e) outlines the continuing planning process through which States develop plans for the management of all navigable waters within the State, including effluent limitations, Total Maximum Daily Loads, and the inventory and ranking of needs for construction of POTWs.

Sec. 110. Authorization of appropriations.

Summary

This section authorizes funding of $ 3.2 billion in 2005 and 2006, $3.6 billion in 2007, $4 billion in 2008, and $6 billion in 2009. The EPA is authorized to reserve not more than $1 million per year to pay the costs of conducting the Clean Water Needs Survey required by CWA Section 516.

Sec. 111. Reports.

Summary

This section revises the statutory requirement under CWA Section 516 for State needs surveys from odd-numbered years to every fourth year.

Discussion

The Clean Water Act requires the EPA to complete the needs survey every 2 years. The Agency has been conducting the survey every 4 years.

Sec. 112. Pilot program for alternative water source projects.

Summary

This section extends the authorization from 2005 through 2007 at $25 million per year.

Discussion

The program, created in 2000, authorizes the Administrator of the Environmental Protection Agency to provide grants to State, interstate and intrastate water resource development agencies, local governmental agencies, private utilities and nonprofit organizations for alternative water resource projects that address a critical water supply need. The pilot program was authorized for $75 million for fiscal years 2002 through 2004. It has not received any appropriated funds.

Sec. 113. Wet weather grants.

Summary

This section extends the eligibility for grants to projects to control stormwater runoff. It extends the authorization from 2005 through 2009 at $250 million per year.

Discussion

Enacted in 2000, CWA Section 221 authorized the Sewer Overflow Control Grants to assist municipalities meet the costs of combined (CSOs) and sanitary sewer overflows (SSOs). According to the 2000 EPA Clean Watersheds Needs Survey, CSOs and SSOs remain among the largest expenses faced by cities with costs to correct the overflow often in the billions of dollars. Funds could be used by a municipality for planning, design and construction of treatment works to intercept, transport, control or treat CSOs and SSOs. Section 113 extends eligibility to projects to comply with Phase I or Phase II of the storm water regulations (55FR47990 and 64FR235, respectively). The Federal cost share for eligible projects is limited to 55 percent of the overall project cost.

The program was authorized for $750 million for fiscal years 2003 and 2004. Funding for the program was contingent upon appropriations for the Clean Water SRF exceeding $1.35 billion. Because appropriations have remained at this level, the grants program has not received any appropriated funds.

Sec. 114. Technical correction.

Summary

Makes a technical correction to Section 121.

Discussion

Current law has two sections 121—The Lake Ponchartrain Basin and the Wet Weather Watershed Pilot Projects. This section renumbers the Wet Weather section as 122.

TITLE II—SAFE DRINKING WATER INFRASTRUCTURE

Sec. 201. Technical assistance for small centers.

Summary

This section reauthorizes $2 million each year for fiscal years 2005 through 2009 for the Environmental Finance Centers (SDWA Section 1420(g)).

Discussion

This section provides resources to the Environmental Finance Centers located at nine universities throughout the country. The Centers provide financial and technical assistance to the regulated community. They assist the operators of PWSs with lowering the costs of compliance, increasing investment in their systems, encourage full cost pricing of services and identify financing options. The Centers also provide advice and recommendations to the EPA on environmental finance issues, trends and options.

Sec. 202. Labor standards.

Summary

Applies Davis-Bacon Act requirements that laborers and mechanics be paid at wages not less than the prevailing wage to all projects financed by the Drinking Water SRF.

Discussion

The Davis Bacon Act of 1931 requires all contracts to which the United States is a party to require the prevailing wage be paid to laborers on construction projects. The Act is limited to contracts directly involving the United States unless otherwise stipulated.

Section 1450(e) of the Safe Drinking Water Act requires the Administrator to "take such action as may be necessary to assure compliance with [Davis Bacon]." As enacted, Davis Bacon applies only to those contracts to which the Administrator or Federal Government is a contractee. In the case of the SRF, the contracts are between the State and the municipality and therefore, Davis Bacon does not apply to the SRF. Section 1452 of SDWA which authorizes the SRF does not include any language that would apply Davis Bacon to the loans. This section would expand Davis Bacon to the Drinking Water SRF for the first time since its creation in 1996.

Sec. 203. Preconstruction work.

Summary

This section modifies the project eligibility list with several changes.

Section 203(1) clarifies that planning, design, and associated preconstruction costs are eligible for funds under the Drinking Water SRF as standalone items.

Section 203(2) states that replacement and rehabilitation of aging systems, including treatment, storage and distribution systems are eligible expenses for the fund. This section also ensures that projects to upgrade the security of a water system are eligible.

Discussion

By clarifying that preconstruction activities are eligible for funding, Section 203(1) ensures treatment works are able to receive financing for engineering costs and other planning costs that precede actual construction. This provision will ensure that small communities with few resources available to develop a project in its early stages can receive assistance for pre-construction activities.

The Safe Drinking Water Act establishes a priority for systems to receive funding under the Drinking Water SRF (SDWA Section 1452(b)(3)) to include projects that address the most serious risk to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. This section clarifies that replacement and rehabilitation are also eligible expenses under the Drinking Water SRF. As Jerry Johnson testified before the Fisheries, Wildlife and Water Subcommittee on behalf of the nation's largest water utilities on February 28, 2002, many large systems biggest expense is replacing old infrastructure and pipes. The committee, by reiterating their eligibility, seeks to ensure that

once a State has addressed the compliance and public health threats and helped those systems that are disadvantaged, they give consideration to helping systems meet the cost of replacing their aging infrastructure.

After the terrorist attacks of September 11, much attention is being paid to security at the Nation's water systems. The Public Health and Bioterrorism Response Act of 2001 (P.L.107–188) required PWSs to assess their vulnerabilities. Systems are now in the process of determining what changes need to be made to their facilities and how to pay for those upgrades. While EPA currently allows PWSs to use the SRFs for security-related costs, this provision would state the eligibility in statute, clarifying that in fact capital costs for security are eligible. Security costs associated with operations, maintenance and personnel are not eligible for the SRF.

Sec. 204. Affordability.

Summary

This section allows public water systems to receive funding assistance for portions of a service area served by the utility.

Discussion

Many large cities do not qualify as disadvantaged under their State's definition of the term because they have both pockets of low-income ratepayers that meet the affordability criteria and industry and pockets of affluent ratepayers. These cities have difficulty raising rates because they have many ratepayers who simply cannot pay more and it is politically difficult to increase rates on only those with a proven ability to pay. In order to assist cities struggling to pay for infrastructure upgrades without imposing too high a burden on their low-income ratepayers, this provision allows a municipality to receive negative interest loans or principal forgiveness if a portion of their service area meets a State definition of disadvantaged.

Sec. 205. Safe drinking water revolving loan funds.

Summary

Section 205(a) changes the amount of its capitalization grant a State can reserve for administration of the program from 4 to 6 percent. Further, under current law, States may set aside up to 10 percent of the SRF, if the State provides an equal dollar amount, for public water system supervision programs, to administer or provide technical assistance for source water protection programs, to develop and implement capacity development strategies, and to administer operator certification programs. This section waves the State match requirement. Finally, this section permanently extends the States' authority to transfer up to 33 percent of its Drinking Water SRF into the Clean Water SRF. The transferred cannot be used to meet the 20 percent match requirement.

Section 205(b) amends the current requirement that States establish a priority system under which projects receive funding for the SRF. This section would require States to ensure that projects are progressively more likely to receive assistance by submitting, among other information requested by the State:

(i) An inventory of assets, including a description of those assets
(ii) A schedule for replacement of those assets
(iii) A financing plan indicating sources of revenue
(iv) A review of options for restructuring the public water system
(v) A review of options for approaches other than traditional approach

This section maintains the SDWA requirement that States give priority to projects that address the most serious risk to human health; that are necessary to ensure compliance with the Act and that assist systems most in need on a per-household basis according to State affordability criteria. It however modifies the requirement that States publish "periodically" a summary of the projects eligible for, and receiving, assistance by requiring the reports at least biennially.

Discussion

Section 205(a) allows States to reserve up to 6 percent of the SRF for administrative costs. According to the State drinking water administrators, the cost to administer the program exceeds the current 4 percent allowable set-aside.[11] In 1996, Congress created the SRF and gave States the authority to operate the program. With this new responsibility came new costs. While the committee does not anticipate that the requirements in this bill will result in new administrative burdens to the States, with the intended increase in appropriations authorized in the bill, it is reasonable to allow States to reserve a larger, but still small, percentage of the SRF to meet their administrative costs.

Section 205(a) also provides States with more flexibility by changing one of the cost-share requirements in current law. States are currently permitted to use 10 percent of their SRFs for specific set-asides as long as they match that 10 percent. However, States are also required to first match 20 percent of the capitalization grant they receive each year from the Federal Government, essentially requiring a double-match on these funds from the States. Given the financial constraints many States are under, few have been able to match the full 10 percent. From 1996 through 2003, States had reserved 4 percent of their grant with nine States reserving the full amount and seven reserving none. This section waives the matching requirement for the 10 percent set-aside.

This section also would make permanent the ability of States to transfer up to 33 percent of the Drinking Water SRF into their Clean Water SRF. During a funding cycle, a State may have a particularly large drinking water or clean water project for which it needs additional funds. This provision allows them to transfer some money from one account to the other while protecting the corpus of the funds. The transferred funds cannot count toward the State's required 20 percent match of the Federal grant.

Section 205(b) adds the definition of restructuring and traditional approach to the statute. As part of its capitalization agreement with the EPA, each State is required to develop a priority system which determines the projects a State will fund each year with its

[11]Association of State Drinking Water Administrators, letter to the Committee, November 6, 2003.

available funds. States must give priority to those projects which address the most serious risk to human health, are necessary to ensure compliance, and assist systems most in need on a per household basis. This section leaves that requirement in place while also requiring that States give additional priority points to those projects who have in place an asset management plan, a capital replacement plan, a financing plan or have reviewed their restructuring options and nontraditional approaches.

While many PWSs have a long-term plan for replacement of their aging assets, many do not. Yet in order to fully understand the scope of the problem the Nation faces, there must be an accounting of the health of our utilities. Further, it makes good business sense to have a full understanding of the condition of one's assets and how much capital will need to raised to replace those assets and over what amount of time.

Additional factors States must include in their priority list include a financing plan indicating how that capital will be raised including rate increases, grant assistance, bonds or other loans. PWSs will also receive additional credit if they have reviewed options for restructuring their water systems. In some cases, it may be better for a utility to consolidate with a neighboring one, develop a partnership with the local energy provider, or consider other cooperative partnerships like public-private partnerships or privatization. These are all encompassed in the term restructuring, the goal of which is to improve upon the management and financial structure of a utility to ensure it is operating as efficiently and cost-effectively as possible. PWSs that explore nontraditional approaches to treatment and source water protection will also be given additional priority points. These new technologies may prove to be less expensive than traditional approaches.

Sec. 206. Grants program.

Summary

This section establishes a new provision, 1452(s), that directs a State to set aside a portion of its SRF for grants to eligible projects as follows:

(s)(1) Requires a State, in any year in which appropriations do not exceed $2.5 billion, to set aside 10 percent of its capitalization grant. This provision can be waived by a State if the average time for processing loan applications during the last 12 months does not exceed 90 days

(s)(2) Requires a State, in any year in which appropriations exceed $2.5 billion, to set aside not more than 5 percent nor less than 2.5 percent of its revolving loan fund.

Discussion

By including a grant component within the SRF, this section seeks to keep the Nation focused on the SRF's as the primary funding mechanism for drinking water. The committee acknowledges there is a growing interest in providing PWSs with grant funds to help meet those costs associated with Federal regulatory mandates. The daily costs associated with operations, maintenance and capital improvements due to age continue to be a local responsibility

which the Federal Government can assist with through the SRF program.

This section would require the States to provide a portion of their SRFs as a grant to local communities. By maintaining a single funding source, rather than creating a new, competing program, the focus remains on the SRF and the need to ensure it receives adequate funding to meet the needs of local communities. The small amount of the set-aside, ensures that the corpus of the fund is protected well into the future by devoting the vast majority of funds to the loan program. Further, by incorporating the grant into the SRF, funding for the grant portion is more likely to be appropriated as the Drinking Water SRF is a program that regularly receives annual appropriations. Whereas Congress authorizes grant programs that do not receive actual appropriations, the SRF annually receives funding and the linkage to the grant program ensures that the grants too will receive funding.

Another goal of this section is to provide a quick infusion of grant funds to communities. The bill allows States to waive this requirement in (s)(1) if they improve the time it takes them to process the loan applications, a leading criticism among applicants for assistance. With the incentive of avoiding a Federal mandate on the use of their SRF funds, the committee believes States will have an incentive to increase the speed of their loan application process.

Sec. 207. Other authorized activities.

Summary

This section permits use of the Drinking Water SRF for implementation of source water protection plans.

Discussion

The SDWA required States to develop source water protection plans by May 2003. States were allowed to use up to 15 percent of their SRF for the development of these plans, as well as conservation easements, wellhead protection programs, capacity development programs and implementation of voluntary, incentive-based source water protection projects. However, no more than 10 percent of these funds could be used for any one of the categories listed above. With many State plans completed, funds are now needed to implement the plans. This section will allow States to use their SRF funds to implement their source water protection plans.

Sec. 208. Small system revolving loan funds.

Summary

This section would establish a loan fund to be operated by a qualified private, nonprofit entity for the purposes of helping small water systems with predevelopment costs and short-term costs. This program, in addition to those technical assistance programs already statutorily provided in the Safe Drinking Water Act, are authorized at $25 million per year for fiscal years 2005 to 2009. States shall provide to the EPA an annual report on the activities supported by this program. Loan terms cannot exceed 10 years and loans cannot exceed $100,000. Loan repayments will be credited to the fund maintained by the qualified nonprofit.

Discussion

The EPA has several existing programs to assist small PWSs, including an information clearinghouse for technical assistance providers called Simple Tools for Effective Planning. The Agency also runs the Small System Technical Assistance Center Network, a series of technical assistance centers at universities throughout the Country. The Agency partners with the National Rural Water Association and the Rural Community Assistance Partnership to provide technical assistance to PWSs including how to locate financing for projects and how to run a water system. Further, the States may reserve up to 2 percent of their SRF to provide technical assistance to small systems. Between 1996 and 2003, States had reserved 1.5 percent of their grants. Twenty-three States reserved the full 2 percent while two States did not reserve any funds.

The committee however continues to hear of a need for additional assistance for these small systems.[12] Many small PWSs cannot afford the costs associated with planning a project, including the engineering costs. Without these initial steps completed, the PWS often has difficulty applying for an SRF loan to begin construction. The Rural Community Advancement Program, for example, runs several small SRFs in States to assist small PWSs with these start-up costs, enabling them to then apply for funds through the State-run SRF for construction costs. This provision enables the Administrator, with the Agency's technical assistance funds, to provide money to nonprofit technical assistance providers to create and run these smaller SRFs.

Sec. 209. Authorization of appropriations.

Summary

This section authorizes funding of $1.5 billion for 2005, $2 billion for 2006 and 2007, $3.5 billion for 2008, and $6 billion for 2009. The EPA is authorized to withhold not more than $1 million per year to conduct the drinking water needs survey required by SDWA Section 1452(h).

Sec. 210. Removal of lead from drinking water in schools and in the District of Columbia.

Summary

Section 210(a) requires the Administrator to establish a program to provide grants to States to assist in paying or reimbursing, costs to local education agencies for remediation lead contamination in drinking water in schools and informing parents, students and teachers about lead contamination in drinking water. It authorizes $40 million each year for fiscal years 2005 through 2008 and permits the Administrator to reserve 5 percent to meet administrative expenses. This is similar to current law Section 1465 which authorized a similar program that did not receive Federal appropriation funds.

Section 1465 in current law provided funds to assist States in meeting the requirements of Section 1464 which required States to establish an assistance program for local education agencies to test

[12]Rural Community Advancement Program, letter to the Committee.

and remediate lead contamination in drinking water from coolers and other sources in schools. This section also required that results of testing be available to the public and that remediation of non lead-free drinking water coolers in schools within 15 months of October 31, 1998.

However, in *Acorn v. Edwards* (U.S. 5th Circuit, 1996), the Court struck down as unconstitutional Sections 1464(d)(1) and (d)(3) because they violated the 10th Amendment of the Constitution. The Court ruled "that section 300j-24(d) [SDWA Section 1464(d)] is an unconstitutional intrusion upon the States' sovereign prerogative to legislate as it sees fit." While the Court left in tact SDWA Section 1464(d)(2) which requires that the test results in Section 1464(d)(1) be made publicly available, because the requirement to test was struck down, Section 1464(d)(1) was essentially rendered meaningless. The Court's decision technically applied only to the 5th Circuit however, it established a precedent that would likely have been upheld in other circuits. This view was recently upheld by EPA in a memo to its Regional offices. Therefore, the committee struck the entire section and instead proceeded with a voluntary program that protects State sovereignty and encourages communities to test their schools and make the results public.

Section 210(b) provides the District of Columbia with $20 million to address lead contamination in its water supply; activities may include assessment of infrastructure; testing of water supplies; distribution of filters; evaluation of chemical additives; pipe replacement and evaluation and improvement of communication with the public. This section also provides $2 million to the National Academy of Sciences to conduct a phased study of the lead contamination in drinking water. Phase I will evaluate compliance of the District of Columbia Water and Sewer Authority with regulations pertaining to lead and copper in drinking water and the potential causes of the contamination. Phase II will assess from a cross-section of cities of varying population sizes across the country with lead service lines the extent to which water levels in those cities have exceeded the action level for lead and the potential causes of the exceedences.

Discussion

Lead, a known toxin, is used in plumbing fixtures and had been a primary ingredient in paint and automobile fuel until it was phased out beginning in the 1970's (*The Elimination of Lead in Gasoline v. M. Thomas*).[13] Great progress has been made in reducing exposure to lead by phasing out leaded gasoline and slowly rehabilitating lead-painted homes. However, swallowing or breathing dust from paint chips is still the leading cause of lead exposure. Lead water lines still exist in many cities, including the District of Columbia.

In 1991, the EPA finalized the lead and copper rule (56 FR 26460), which would minimize lead and copper in drinking water by reducing corrosivity. Under the rule, the goal for lead in drinking water is zero parts per billion (ppb). The rule also established an Action Level, which is a combined measurement of lead

[13] Annual Review of Energy and the Environment. 20:301–324, 1995.

amounts and prevalence at which the PWS is required to act to reduce the lead. The Action Level is defined as 10 percent of homes tested exceeding 15 ppb. At this level, the system is required to increase monitoring and testing, optimize corrosion control treatment and inform the public about the exceedances. If the corrosion control treatment does not result in a decrease in households that exceed the action level, the system is required to begin replacing lead service lines at a rate of 7 percent per year.

Unlike other contaminants regulated under the Safe Drinking Water Act, lead is measured inside the residence or business, not at the treatment plant, because it leaches into the water from the service lines.

In accordance with the rule, the Washington Aqueduct, owned and operated by the U.S. Corps of Engineers, installed the corrosion control treatment in 2000. During the monitoring period July 2000-June 2001, WASA reported sampling 50 homes. However in its compliance order, docket No. SDWA–03–2004–0259 DS, EPA found that of those 50 samples, 2 were taken from a previously sampled location. WASA was required to sample from 50 unique locations during this time. Five of these samples were taken outside of the required sampling period. EPA also found that WASA failed to report six samples that were taken. EPA found that if WASA had included these unreported samples, WASA would have exceeded the action level of lead in 90th percentile during July 2000 - June 2001 timeframe.

In August 2002, WASA reported that during the compliance period July 1,2001 - June 30, 2002, it exceeded the action level for lead. The lead level in first draw water samples from the 90th percentile of 53 residences tested was 75 ppb, well above the action level of 15 ppb. WASA was required to implement a lead in drinking water public education program, and to initiate lead service line replacement at a rate of 7 percent per year.

From January 2003 through December 2003, WASA continued to test homes and continued to exceed the action level. As such, the Agency was required to continue it public education program and its lead service line replacement efforts.

EPA included several categories of findings regarding WASA's compliance with the lead and copper rule in their consent order which include a failure to take samples within the monitoring period, a failure to conduct follow-up monitoring of partially replaced lead service lines and a failure to comply with requirements for public service announcements and to use required language in written materials provided to the public as well as a failure to perform corrective action. It should be noted that EPA was informed by WASA of these events and the data and signed off on the public service announcements.

The EPA consent order requires WASA to take several corrective actions including:

- Plans for updating its lead service line inventory and reporting to EPA.
- Requirement for WASA to strongly encourage full replacement of lead service lines with owners paying for their portion, including submission of a plan to EPA for encouraging homeowners to agree to full replacement.

- Requirement for WASA to develop and submit a public education plan including public health issues, steps to reduce health risks and steps to address EPA recommendations on effectiveness of prior public education.
- Requirement for WASA to document to EPA that they have provided water filers to all customers suspected or known to have lead contamination at no charge as well as those with unknown service line materials.
- Requirement for WASA to submit detailed sampling plans to EPA.

On August 23, 2004, WASA began adding orthopohsophate to the drinking water supply through the city to reduce the corrosivity of the water supply in an effort to reduce lead levels. EPA estimates that it will take 6 months to detect a reduction in lead levels.

One of the leading complaints against WASA throughout this period is that the agency failed to communicate effectively with the public about how many homes had exceeded the action level (and by how much) and what residents should do to protect themselves. On February 27, 2004, D.C. Mayor Anthony Williams and Councilmember Carol Schwartz notified Chairman Inhofe by letter that they had "established the Interagency Task Force on Lead in Drinking Water [which] has been meeting weekly to look into ways [to, in addition to other actions,] identify funding sources to help pay for [lead pipe] replacements and make certain [the District of Columbia Water and Sewer Authority] and the D.C. Department of Health communicate critical information to citizens promptly and clearly." In testimony before the Subcommittee on Fisheries, Wildlife and Water subcommittee on April 7, 2004, the Director of EPA's Region III, Donald Walsh, stated, "public education efforts were ineffective, and we believe, not fully compliant in all instances with EPA rules." Additional testimony from a risk management expert and D.C. residents corroborated the view that public notification and education efforts were ineffective.

To speed the corrective efforts of EPA, Mayor Williams, the Council of the District of Columbia, and the D.C. Water and Sewer Authority, the committee believes additional assistance and scrutiny must be provided to the city as well as nation's schools. Therefore, this section would authorize the National Academy of Sciences to conduct a study, first of the situation in D.C. to determine the exact cause of the problem. The Academy is then to assess the situation in other cities with lead service lines to determine if they too have encountered elevated lead levels in their drinking water. Congress and the EPA must fully understand the scope and the cost of the problem before proposing changes that will affect all cities and that - though well-intentioned - may fail to address the problems in D.C.

The outrage of residents in D.C. about inadequate and misleading information about a known risk in their drinking water has motivated the committee to authorize a $20 million grant to the District of Columbia to take whatever actions are needed to mitigate the problem, including assess its infrastructure, test water supplies, distribute filters, evaluate chemical additives, replace pipes and evaluate and improve communication with the public.

Finally, concerns remain about the safety of drinking water in D.C. schools. Similarly, there may be lead service lines and lead in drinking water coolers in other schools throughout the country. EPA recommends that school districts test for lead in their drinking water to ensure that it is safe for consumption. The individual school buildings may still have too much lead in the drinking water because of lead water fixtures. As such, the bill would provide funds to schools to reimburse them for costs associated with testing their water, removing water coolers and disseminating information, including test results, to the school community.

Sec. 211. Small public water system assistance program.

Summary

This section establishes a new program under the Safe Drinking Water Act to assist PWSs and Indian Tribes with meeting the costs of drinking water regulations.

Section 1471 establishes a definition for an eligible activity as an activity, including source water protection projects, carried out by an eligible entity to ensure compliance with a national primary drinking water regulation. It cannot include any activity to increase the population served by a public water system unless the project is necessary to achieve compliance or provide an unserved population with a safe water supply.

Section 1471 also defines an eligible entity as a small public water system or Tribe that serves a community that is disadvantaged, as determined by the State, or may become disadvantaged as a result of a project; or a public water system that will incur $3 million or more in compliance costs. It also defines a small public water system as one serving less than 15,000.

Section 1472(a) establishes a program within EPA to assist small public water systems in carrying out eligible activities.

Section 1472(b) requires that priority be given to those projects that address the most serious risks to human health from lack of compliance with national primary drinking water regulations; are necessary to ensure compliance with national primary drinking water regulations or assist systems serving communities that are most in need based on affordability criteria established by the State.

Section 1472(c) also authorizes the Administrator to use not less than 1.5 percent of the funds made available under this Title for grants to technical assistance providers to help eligible entities assess their needs, identify additional funding sources and plan, implement and maintain and eligible activity. Eligible entities are limited to using not more than 5 percent of the funds received under this Title for technical assistance.

Section 1472(d) further requires the Administrator to reserve not less than 3 percent of funds for projects by Indian Tribes. The same eligibilities and limitations apply to projects carried out by Tribes. Specific program priority requirements are provided for Tribes.

Section 1472(e) limits funds to those projects which will aid in compliance with the Act, those that restructure or consolidate facilities to achieve compliance or in cases where restructuring and consolidation are not practicable, if the Administrator determines

that the system has made a good faith effort to comply with and will adhere to an enforceable schedule to comply; or if the Administrator determines that the system lacks the technical, financial and managerial capacity to ensure compliance.

Section 1472(f) limits the Federal share of any project to 80 percent of the cost of the project. The Administrator may waive the cost-share in some circumstances.

Section 1472(g) requires that one year after disbursement, any unused grants be returned to the Administrator for distribution to other recipients.

Section 1473 requires the Administrator to submit a report to the Committee on Environment and Public Works and the Committee on Energy and Commerce that lists the activities being carried out with the grants; the number of grants and the location of the recipient; each eligible entity that receives a grant; the amount of each grant and description of activity funded.

Section 1474 authorizes $200 million per year for fiscal years 2005 through 2008.

Discussion

While the infrastructure gap is affecting communities of all sizes in all parts of the country, the struggle to meet rising costs is particularly difficult for small communities. As Elmer Ronnebaum, the General Manager of Kansas Rural Water, testified on February 26, 2002 before the Committee on Environment and Public Works,

> "Many of the regulations will force small towns to come up with millions in financing - many systems will be stressed to comply. I think it is significant to observe a new dynamic in EPA regulations: the regulation of naturally occurring contaminants and the regulations of operations and maintenance in utilities. The result of this new effort by EPA will be to greatly expand the number of systems forced into costly compliance with EPA rules. For example, very few systems were required to treat for EPA's previous rules on organic contaminants, many with anthropogenic origins. However, the forthcoming arsenic rule could capture as many as 4,000 communities; this will greatly drive the demand for additional funding resources. Upcoming EPA rules that may be expensive in thousands of rural communities include: standards for certification of operators, filter backwash, radon, surface water treatment rules, arsenic, disinfection byproducts, ground water disinfection, etc."

This section of S. 2550 seeks to help communities address costs due to compliance with the Safe Drinking Water Act. Systems are faced with complying with several rules over the next few years, including the new standard for arsenic (66 FR 6975). According to EPA's cost estimate, small systems could see an increase of up to $327 per year. If the city is one like Wewoka, Oklahoma that is home to 3,700 residents, 20 percent of whom are unemployed, a $327 increase in water fees is exorbitant.[14] Communities are also struggling to comply with the Long Term 1 Enhanced Surface Water Treatment Rule (67 FR 1811) and for those systems that chemically treat their water, the Stage 1 Disinfectants and Disinfection Byproducts Rule (63 FR 69389).

This section of the bill seeks to help these systems meet the costs associated with these and other drinking water regulations. It would provide grants to small systems and Tribes to assist them in coming into compliance with the statute. Those systems who are

[14]U.S. Congress. Committee on Environment and Public Works. *The Cost to Local Governments to Implement the Clean Water Act and the Safe Drinking Water Act*. Hearing. 108th Congress, 2nd session, July 26, 2002. Rick Bourgue, City Manager, City of Wewoka, OK.

not in compliance, face a public health threat or are disadvantaged are to receive priority consideration. Funds are limited to those projects which will aid in compliance with the Act. It is unlikely that sufficient funding will be provided to this program to give every system eligible for funds enough money to fully comply with the Act. However, funds may be made available that will move some systems much closer to compliance than if they had not received any Federal funding.

The system should consider restructuring and consolidation to come into compliance. If these options are not practicable, and the system is not in compliance with the Act, the system must have made a good faith effort to comply and will adhere to an enforceable schedule to comply. Funds can also be used to assist those systems that lack the technical, financial and managerial capacity to ensure compliance.

Sec. 212. Small public water system assistance program.

Summary

This section establishes a new program under the Safe Drinking Water Act to assist PWSs and Indian Tribes with meeting the costs of drinking water regulations.

Section 1471 establishes a definition for an eligible activity as an activity, including source water protection projects, carried out by an eligible entity to ensure compliance with a national primary drinking water regulation. It cannot include any activity to increase the population served by a public water system unless the project is necessary to achieve compliance or provide an unserved population with a water supply.

Section 1471 also defines an eligible entity as a small public water system or Tribe that serves a community that is disadvantaged, as determined by the State, or may become disadvantaged as a result of a project; or a public water system that will incur $3 million or more in compliance costs. It also defines a small public water system as one serving less than 15,000.

Section 1472(a) establishes a program within EPA to assist small public water systems in carrying out eligible activities.

Section 1472(b) requires that priority be given to those projects that address the most serious risks to human health from lack of compliance with national primary drinking water regulations; are necessary to ensure compliance with national primary drinking water regulations or assist systems serving communities that are most in need based on affordability criteria established by the State.

Section 1472(c) also authorizes the Administrator to use not less than 1.5 percent of the funds made available under this Title for grants to technical assistance providers to help eligible entities assess their needs, to identify additional funding sources and plan, implement and maintain and eligible activity. Eligible entities are limited to using not more than 5 percent of the funds received under this Title for technical assistance.

Section 1472(d) further requires the Administrator to reserve not less than 3 percent of funds for projects by Indian Tribes. The same

eligibilities and limitations apply to projects carried out by Tribes. Specific program priority requirements are provide for the tribes.

Section 1472(e) limits funds to those projects which will ensure compliance with the Act, those to restructure or consolidate facilities to achieve compliance or in cases where restructuring and consolidation are not practicable, if the Administrator determines that the system has made a good faith effort to comply and will adhere to an enforceable schedule to comply; or if the Administrator determines that the system lacks the technical, financial and managerial capacity to ensure compliance.

Section 1472(f) limits the Federal share of any project to 80 percent of the cost of the project. The Administrator may waive the cost-share in some circumstances.

Section 1472(g) requires that one year after disbursement, any unused grants be returned to the Administrator for distribution to other recipients.

Section 1473 requires the Administrator to submit a report to the Committee on Environment and Public Works and the Committee on Energy and Commerce that lists the activities being carried out with the grants; the number of grants and the location of the recipient; each eligible entity that receives a grant; the amount of each grant and describes the activity funded.

Section 1474 authorizes $1 billion per year for 2005 through 2008.

Discussion

This section is fundamentally the same as the preceding section with two exceptions. This section limits funding to those systems for whom the money will ensure, instead of aid, compliance. It further authorizes $1 billion a year instead of $200 million a year.

TITLE III—MISCELLANEOUS

Sec. 301. Definition of Administrator.

Summary

This section clarifies that references to the "Administrator" are to the Administrator of the Environmental Protection Agency.

Sec. 302. Demonstration grant program for water quality enhancement and management.

Summary

Section 302(a) establishes a nationwide demonstration grant program within EPA to promote innovations in technology and alternative approaches to water quality management as well as reduce costs to municipalities incurred in complying with the CWA and the SDWA.

Section 302(b) requires municipal applicants to submit to the Administrator a plan that is developed in coordination with the State in which the municipality is located and interested stakeholders. It further requires the applicant to describe the water impacts it seeks to address, include a strategy to address the water quality program and achieve the same goals that could be achieved using

more traditional methods or those required by the CWA and the SDWA and include a schedule for achieving the goals.

Section 302(b) further defines the types of projects that are eligible to include those that address excessive nutrient growth; urban or rural population pressures; lack of an alternative water supply; difficulty in water conservation and efficiency; lack of support tools and technologies; lack of monitoring or data analysis; nonpoint source water pollution; sanitary and combined sewer overflows; problems with naturally occurring constituents of concern; problems with erosion or excess sediment; new approaches to water treatment, distribution and collection and new methods for collecting and treating wastewater.

The Administrator much ensure, to the maximum extent practicable, that the projects are diverse geographically, in terms of the technologies tested and the nontraditional approaches used and that each category of projects described above is adequately represented. Higher priority should be given to projects that address multiple problems and are regionally applicable.

The Administrator must ensure, to the maximum extent practicable, that at least one community serving less than 10,000 receives a grant each year and that no municipality receives more than 25 percent of the funds.

This section also limits the Federal cost share to 80 percent which the Administrator may waive for affordability reasons.

Section 302(c) requires each grant recipient to report to the Administrator on the progress of the project after one, two and 3 years. The Administrator must report to Congress 2 years after enactment on the results of the demonstration program.

Section 302(d) requires the Administrator, to the maximum extent practicable, to incorporate the results of the projects into programs administered by the Administrator.

Section 302(e) authorizes the Administrator to award grants and enter into cooperative agreements with research institutions, educational institutions and other appropriate entities for research and development on the use of innovative and alternative technologies to improve water quality or drinking water supply. Eligible projects include those to increase the effectiveness and efficiency of public water supply systems; to encourage the use of innovative or alternative technologies or approaches related to water supply or availability; and to increase the effectiveness and efficiency of treatment works.

This section authorizes $20 million per year from fiscal year 2005 through fiscal year 2009 to carry out this Title.

Section 302(f) authorizes $20 million for each year from fiscal year 2005 through fiscal year 2009 to carry out Section 302 except (e).

Discussion

One important aspect of reducing the infrastructure financing gap is finding more affordable alternatives for POTWs and PWSs. As the Deputy Assistant Administrator from EPA's Office of Water testified before the committee on February 26, 2002:

"This strategy to renew our water and wastewater infrastructure . . . puts a high premium on optimizing the efficient use of our current capital assets and the new

investments we must make. That will require the use of innovative technologies for improved services at lower life-cycle costs, which in turn means supporting research and development on these innovative technologies."

To further encourage research into innovative technologies, Section 302 establishes in the EPA both a research and development program and a demonstration grant program. The research program is aimed at increasing the effectiveness and efficiency of public water supply systems, encouraging the use of innovative or alternative approaches to water supply or availability and increasing the effectiveness of the treatment works. It is authorized at $20 million per year from fiscal year 2005 through fiscal year 2009.

The demonstration grant program targets water quality management and enhancement. It requires at least a 20 percent non-Federal cost share for projects. The program will promote innovations in technology and alternative approaches to water quality management and supply, with the goal of reducing municipal costs of complying with the Clean Water Act and the Safe Drinking Water Act. Municipalities selected for programs must describe a strategy by which the demonstration grants could achieve similar results as those mandated by the two statutes or those that could be achieved by traditional water quality methods. Grant recipients must submit annual reports to EPA which must submit a report to Congress. The Administrator must ensure to the maximum extent practicable that innovative technologies, geographic distribution, and non-traditional approaches are represented.

The National League of Cities, the Conference of Mayors, and the American Metropolitan Sewerage Association (AMSA) testified in favor of demonstration grant program at a February 2002 hearing. AMSA testified that such a program is "vitally important."

Sec. 303. Cost of service study.

Summary

This section requires the National Academy of Sciences (NAS) to identify existing standards for affordability; determine the manner in which those standards are determined; determine how affordability differs depending on community size and location and study the extent to which affordability affects the decision of a utility to increase rates. This section also requires the NAS to evaluate the factors and characteristics that are required for a community to be considered disadvantaged.

Discussion

Small and disadvantaged communities often struggle to meet regulatory costs as well as to maintain their POTWs and PWSs. Whether a community receives additional financial assistance in meeting their obligations often depends on how States define disadvantaged. Further, how the EPA, the States and the communities themselves define affordable has a direct impact on whether the community as a whole and individual ratepayers receive additional financial assistance.

Sec. 304. State revolving fund review process.

Summary

This section requires the Administrator to consult with States, other Federal agencies, and utilities to identify ways to expedite and improve the application and review process for the SRFs and take such administrative action as authorized under existing law to achieve that goal. The Administrator shall provide to Congress a report that contains recommendations for legislation to further improve the processes.

Discussion

While each State is required to comply with several Federal requirements, each also imposes many of its own. This provision requires the Administrator to work with States and other agencies to develop recommendations for streamlining the application process and lessening the amount of time it takes to receive funds. One of the goals of the Water Infrastructure Financing Act is make the SRF more user-friendly. This study is one step in that effort.

Sec. 305. Southeast Colorado safe drinking water supply.

Summary

Section 305 authorizes $85 million for the Southeast Colorado Water Activity Enterprise to assist communities in Pueblo and Prowers Counties, Colorado to construct a water transmission line from the Pueblo Reservoir to the city of Lamar, Colorado.

Discussion

The Arkansas Valley Conduit originally received congressional authorization in the 1960's as part of the Fryingpan-Arkansas Project to provide abundant, clean water to the people of Southeast Colorado. At the time of authorization, the Federal Government had already deemed the Arkansas River as unacceptable for drinking water purposes, yet forty years have passed without construction. Recent drought conditions have worsened the quality and created water shortages along the river. Selenium and other contaminants coupled with the drought have seriously imperiled Southeast Colorado's drinking water supplies, leaving expensive and inefficient treatment processes as the only option. Feasibility reports have shown that Southeast Colorado lacks the ability to pay for such treatment facilities and therefore must rely on Federal assistance. The studies have shown that the Conduit is a viable solution to the drinking water situation. This section provides funding to the communities to construct the conduit. The committee expects other funding sources will be needed to complete the project. While the committee historically does not fund individual water projects, because the Department of Interior failed to follow through on construction of the project, already authorized by Congress, the committee believes this is an appropriate project to reiterate congressional support for by providing an additional authorization.

Sec. 306. Assessment of perchlorate contamination.

Summary

Requires the U.S. Geological Survey to conduct a nationwide assessment of sites contaminated with perchlorate and the geological conditions of those sites.

Discussion

Perchlorate is both naturally occurring and man made. While the majority of perchlorate manufactured in the U.S. is used as solid rocket fuel, perchlorate is also used in such widely distributed consumer products as fireworks, road flares, and automobile airbags. In addition, prior to the development of more modern drugs, perchlorate was used as a drug to treat thyroid disorders such as Graves disease. Perchlorate is still approved by the FDA as a drug and is administered in conjunction with certain medical imaging techniques. Because of such widespread use perchlorate has been discovered in both soil and water samples. In 1998, perchlorate was placed on the EPA's Contaminant Candidate List. Those substances placed on the list are then considered for regulation. However, the EPA concluded that it could not regulate the contaminant at that time because the Agency lacked both a risk assessment and occurrence data.

In 1999, as part of the Unregulated Contaminant Monitoring Rule, all large PWSs were to monitor for perchlorate over the subsequent 2-year period to determine if large amounts of the public were being exposed to perchlorate in their drinking water. The results of the monitoring of treated drinking water, not source water, found that 2 percent of the 26,000 results showed detectable levels of perchlorate.

The EPA also initiated a risk assessment for perchlorate. Currently, there is not a scientific consensus on what level of perchlorate must be consumed to create an adverse health effect. Because of the lack of consensus, in March 2003, EPA and the Department of Defense requested the National Academy of Sciences advise EPA on questions related to its draft perchlorate risk assessment. The NAS' assessment of EPA's report is due in January 2005. The fiscal year 2004 Department of Defense Authorization Act required the Agency to have an independent epidemiological study and endocrinological review of human exposure to perchlorate in drinking water.

Section 306 requires the U.S. Geological Survey to conduct an assessment of sites contaminated by perchlorate to provide data on the extent of water contamination.

Sec. 307. National estuary program.

Summary

Reauthorizes the National Estuary Program at $35 million for an additional 5 years through 2010.

Discussion

In 1987, Congress established the National Estuary Program (NEP) by adding Section 320 to the Clean Water Act. The goal of

Section 320 is the promotion of comprehensive conservation and management plans (CCMPs) for estuaries of national significance through the collaborative voluntary efforts of Federal, State, local, non-profit and private interests. Today, the NEP includes 28 estuaries in 18 States and Puerto Rico. All 28 estuary programs are in the process of implementing their CCMPs. The NEP is currently authorized at $35 million annually through fiscal year 2005. This legislation would reauthorize the NEP at $35 million annually through FY2010.

Sec. 308. Sewage control technology grant program.

Summary

Adds a new section to the Federal Water Pollution Control Act in which $100 million is authorized for 2005 through 2009 to provide grants to POTWs in the Chesapeake Bay Watershed that treat at least 500,000 gallons of wastewater per day and install technologies that are designed to reduce total nitrogen in discharged wastewater to an average annual concentration of 5 milligrams per liter.

Discussion

Excessive nutrients, including nitrogen, remain one of the most serious pollution problems facing the Chesapeake Bay. The overabundance of nitrogen and phosphorous deplete the oxygen levels in the Bay, causing a condition known as hypoxia. Sea life virtually disappears in hypoxic water. Recent modeling of EPA's Bay Program has found that nutrient discharges must be reduced by more than 35 percent in order to fully restore the Bay. Sources that must reduce their nitrogen outputs include municipal wastewater treatment plants.

There are 304 major wastewater treatment plants in the Chesapeake Bay watershed: Pennsylvania, 123, Maryland, 65, Virginia, 86, New York, 18, Delaware, 3, Washington, DC, 1, and West Virginia, 8. These plants contribute about 60 million pounds of nitrogen per year - one-fifth - of the total load of nitrogen to the Bay. Given the large amount of nitrogen being released from POTWs, one way to effectively address this problem is to upgrade these plants to remove more nitrogen from their effluent. The average secondary treatment plant discharge contains 12–16 milligrams of nitrogen per liter; some techniques, such as biological nutrient removal can cut this nitrogen discharge level by over half. Upgrading these plants with nutrient removal technologies to achieve nitrogen reductions of 3 mg/liter would remove 46 million pounds of nitrogen in the Bay each year or 40 percent of the total nitrogen reductions needed.

Sec. 309. Special water resources study.

Summary

Section 309(a) adds the Secretary of Homeland Security to the Water Resources Council.

Section 309(b) authorizes the Water Resources Council to carry out a study of water management programs used by all levels of government and the private sector to increase water supplies and

improve availability; consult with agencies and entities to develop recommendations for a comprehensive water strategy. The water strategy must:

(i) Respect the primary role of States in regulating water rights and uses,

(ii) Identify incentives to ensure an adequate and dependable supply of water through 2054,

(iii) Suggest strategies to avoid increased mandates on State and local governments,

(iv) Eliminate duplication and conflict among Federal programs,

(v) Considers all available technologies and methods to optimize water supply reliability, availability, and quality,

(vi) Recommends means of capturing excess water and flood water for conservation and use in drought,

(vii) Suggests financing options for supply and public works projects,

(viii) Suggests strategies to conserve existing water supplies, including repairing aging infrastructure,

(ix) Includes other objectives relating to the effective management of water supply to ensure reliability, availability and quality.

This section further requires the Council to evaluate Federal water programs in existence on the date of enactment and submit to Congress and the President recommendations to eliminate discrepancies and duplication and any other circumstances that interfere with the effective operation of the programs. The Council also must develop and make publicly available water planning models.

The Council is required to develop and coordinate public awareness activities to provide the public with access to understandable information on water supply, reuse and conservation. The Council must consult with interested groups including those representing the agriculture, fisheries and forestry industries, fire management interests, rural and urban water associations, environmental interests, engineering and construction interests, the scientific community that is concerned with climatology and hydrology, resource dependent businesses and any other group the Council considers necessary.

The Council is required to submit reports every 180 days after the Council's first meeting to the President and relevant congressional committees. A final report must be submitted no later than 3 years after the first meeting of the Council which details the Council's findings and conclusions, recommendations for legislation and other policies. Section 309(c) authorizes $9 million for 2005 to be used until expended.

Discussion

Water supply is growing concern not only in the western United States, which is commonly associated with water shortages and fights, but also in the eastern United States which recently suffered from a long drought. While water supply is and should continue to be a State governed issue, there are several Federal programs that address the issue of supply. Better coordination of these programs may be necessary. Further, the Federal Government may be able to provide useful resources, information and tools to the States while respecting their primacy over the issue.

The U.S. Water Resources Council, established by the Water Resources Planning Act of 1965, had been responsible for studying the nation's water and related land resources. It prepared periodic assessments to determine whether these resources were adequate to meet national water requirements and developed important economic and environmental criteria for water projects - known as the Principles and Guidelines - that are still used by Federal water resource planning agencies. Under President Carter, it was suggested that the WRC's role be expanded to include greater regulatory authority and stronger review of water projects. This proved very unpopular with many stakeholders and the Council was eliminated.

This section would reauthorize the Council to develop recommendations for a comprehensive water strategy which must respect the rights of States, avoid mandates on local and State governments while suggesting options for addressing water shortages, means of capturing excess water and financing water projects. The Council is also charged with assessing current data and making recommendations about duplication among the Federal agencies with a role in water supply. The Council is charged with developing and making publicly available water planning models and initiating a public information campaign on water reuse and conservation.

LEGISLATIVE HISTORY

On June 21, 2004, Senator Crapo, for himself, Senator Inhofe and Senator Murkowski, introduced the Water Infrastructure Financing Act (S. 2550). The bill was read twice and referred to the Committee on Environment and Public Works. The committee met on June 23, 2004 to consider the bill. The bill, as amended, was ordered reported on June 23, 2004.

HEARINGS

The committee has been working on legislation to reauthorize the two SRFs and provide additional resources to communities throughout the 107th and 108th Congresses. The Subcommittee on Fisheries, Wildlife, and Water held four hearings related to clean water and drinking water programs and one legislative hearing on S. 1961. The full committee held one legislative hearing on S. 1961.

On March 27, 2001, The Subcommittee on Fisheries, Wildlife, and Water held a hearing on water and wastewater infrastructure needs. Testimony was received from Hon. Christine Todd Whitman, Administrator, Environmental Protection Agency; Mr. Jon Sandoval, Chief of Staff, Idaho Department of Environmental Quality, Boise, ID; Mr. David Struhs, Secretary, Florida Department of Environmental Protection, Tallahassee, FL; Mr. Harry Stewart, Director, Water Division, New Hampshire Department of Environmental Services, Concord, NH; and Mr. Allen Biaggi, Administrator, Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Carson City, NV.

On April 30, 2001 in Columbus, Ohio, the Subcommittee Fisheries, Wildlife, and Water held a field hearing, focusing on the types of water infrastructure challenges facing local communities in that region. Testimony was received from Hon. Lydia Reid, Mayor

of Mansfield, OH; Hon. Robert Vicenzo, Mayor of St. Clairsville, OH; Mr. Christopher Jones, Director, Ohio Environmental Protection Agency; Columbus, OH; Mr. Erwin Odeal, Executive Director, Northeast Ohio Regional Sewer District, Cleveland, OH; Mr. Robert Stevenson, Commissioner, Department of Public Utilities, Division of Water/Wastewater, Toledo, OH; Mr. Patrick T. Karney, P.E., Director, Metropolitan Sewer District of Greater Cincinnati, Cincinnati, OH; and Mr. Patrick Gsellman, Environmental Supervisor, Bureau of Engineering, Akron, OH.

On October 31, 2001, the Subcommittee on Fisheries, Wildlife, and Water held an oversight hearing on innovative financing techniques for water infrastructure improvements. Testimony was received by Mr. G. Tracy Mehan III, Assistant Administrator, Office of Water, Environmental Protection Agency; Mr. Stephen E. Howard, Senior Vice President, Lehman Brothers; Mr. Rick Farrell, Executive Director, Council of Infrastructure Financing Authorities; Mr. Peter L. Cook, Executive Director, National Association of Water Companies; Mr. Harold J. Gorman, Executive Director, New Orleans Sewage and Water Board, on behalf of the Association of Metropolitan Water Agencies; and Mr. Paul Pinault, Executive Director, Narragansett Bay Commission, on behalf of the Association of Metropolitan Sewerage Agencies.

On November 14, 2001, the Subcommittee on Fisheries, Wildlife, and Water held a hearing on water supply. Testimony was received from Hon. Mike Parker, Assistant Secretary of the Army for Civil Works; Mr. John Keys, Commissioner for the Bureau of Reclamation, Department of the Interior; Mr. Tom Weber, Deputy Chief of Programs, Resources Conservation Service, Department of Agriculture; Ms. Ane Diester, Associate Vice President, Metropolitan Water District of Southern California, testifying as the non-Federal Chair of the National Drought Council; Mr. Jay Rutherford, Director, Water Supply Division, Vermont Department of Environmental Conservation, on behalf of the Association of State Drinking Water Administrators; Mr. Ken Frederick, Senior Fellow, Resources for the Future; and Mr. Leland 'Roy' Mink, Director, Idaho Water Resources Research Institute.

On February 26, 2002, the Committee on Environment and Public Works held the first legislative hearing on S. 1961 and other water infrastructure related bills. Testimony was received from Senator Jon Kyl; Mr. Ben Grumbles, Deputy Assistant Administrator for Water, Environmental Protection Agency; Hon. Douglas H. Palmer, Mayor of Trenton, NJ and chairman of the Urban Water Council of the Conference of Mayors; Hon. Joseph A. Moore, Alderman of the city of Chicago, on behalf of the League of Cities; Ms. Nancy Stoner, Director, Clean Water Project, Natural Resources Defense Council; Mr. Paul Schwartz, National Policy Director, Clean Water Action; Mr. Bill Kukurin Associated Builders and Contractors; Mr. Jim Barron, President, Ronkin Construction, on behalf of the National Utility Contractors Association; Mr. Terry Yellig, Building Trades Attorney, Sherman, Dunn, Cohen, Leifer & Yellig, on behalf of the International Union of Operating Engineers.

On February 28, 2002, the Subcommittee on Fisheries, Wildlife, and Water held the second legislative hearing on S. 1961 and other

water infrastructure related bills. Testimony was received from Senator Paul S. Sarbanes; Mr. Robert Hirsch, Associate Director of Water, U.S. Geological Survey; Mr. Andrew M. Chapman, President, Elizabethtown Water Company, on behalf of the National Association of Water Companies; Mr. Ed Archuleta, General Manager, El Paso Water Utilities, on behalf of the Association of the Metropolitan Water Agencies; Mr. Paul Pinault, Executive Director, Narragansett Bay Commission on behalf of the Association of Metropolitan Sewerage Agencies; Mr. Elmer Ronnebaum, General Manager, Kansas Rural Water Association, on behalf of the National Rural Water Association; Mr. Howard Neukrug, Director, Office of Watershed of the Philadelphia Water Department, on behalf of the American Water Works Association; Mr. Tom Morrissey, President, Association of State and Interstate Water Pollution Control Administrators; and Mr. Jay L. Rutherford, P.E., Director, Water Supply Division for the Vermont Department of Environmental Conservation, on behalf of the Association of State Drinking Water Administrators.

On February 15, 2002, Senators Graham, Crapo, Jeffords and Smith introduced S. 1961, the Water Investment Act of 2002. The committee reported the bill on May 17, 2002 by a vote of 13 to 6.

On June 21, 2004, Senators Crapo, Inhofe and Murkowski introduced S. 2550, the Water Infrastructure Investment Act of 2004.

ROLL CALL VOTES

The Committee on Environment and Public Works met to consider S. 2550 on June 23, 2004. A manager's amendment offered by Senators Inhofe and Crapo was agreed to by voice vote.

An amendment filed by Senator Jeffords was accepted by unanimous consent. The Amendment makes technical changes to the projects eligible for assistance.

An amendment filed by Senator Voinovich was accepted by unanimous consent. The amendment requires the States to use 2 percent of their Clean Water SRF for water quality management planning.

An amendment filed by Senator Jeffords was accepted by unanimous consent. The amendment allows States to use SRF funds to provide grants to local watershed groups to capitalize local revolving loan funds to provide resources to nontraditional projects.

A substitute amendment offered by Senator Jeffords was defeated by rollcall with 9 ayes and 10 nays. Senators Jeffords, Baucus, Reid, Graham, Leiberman, Boxer, Wyden, Carper and Clinton voted for the amendment. Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas and Allard voted against the amendment.

An amendment offered by Senator Jeffords to authorize a program to address lead in drinking water was defeated by roll call vote with 9 ayes and 10 nays. Senators Jeffords, Baucus, Reid, Graham, Leiberman, Boxer, Wyden, Carper and Clinton voted for the amendment. Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas and Allard voted against the amendment.

A Bond second degree amendment to the Jeffords amendment which would have required EPA, before reducing the acceptable

level of lead in fixtures to .2 percent as directed in the Jeffords' amendment to ensure there would not be a loss of jobs in the brass and cooper fixture industry was defeated by voice vote.

An amendment offered by Senator Crapo to authorize funds for the District of Columbia to address lead in its drinking water; authorize a study by the National Academy of Sciences into the D.C. lead situation and to determine if a nationwide problem exists and to provide funds to mitigate lead in drinking water in the nation's schools passed by roll call with 13 ayes and 6 nays. Senators Allard, Bond, Carper, Chafee, Cornyn, Crapo, Graham, Murkowski, Reid, Thomas, Voinovich, Warner and Inhofe voted for the amendment. Senators Baucus, Boxer, Clinton Lieberman, Wyden, and Jeffords voted against the amendment.

An amendment offered by Senator Jeffords to require States to look at local development plans as part of their continuing planning process outlined section 303(e) of the CWA was defeated by roll call vote with 9 ayes and 10 nays. Senators Jeffords, Baucus, Reid, Graham, Leiberman, Boxer, Wyden, Carper and Clinton voted for the amendment. Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas and Allard voted against the amendment.

An amendment offered by Senator Boxer to require the United States Geological Survey to conduct an assessment of sites contaminated by perchlorate was agreed to by rollcall with 10 ayes and 9 nays. Senators Jeffords, Baucus, Reid, Graham, Leiberman, Boxer, Bond, Wyden, Carper and Clinton voted for the amendment. Senators Inhofe, Warner, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas and Allard voted against the amendment.

An amendment by Senator Voinovich to reauthorize the sewer overflow control grants, clarifying that storm water is an eligible expense, was accepted by voice vote as amended by a second degree amendment by Senator Crapo to reauthorize the National Estuary Program, the sewer overflow control grants, create a Sewer Control Technology grant program and Small Public Water System Assistance Program. Senator Voinovich accepted the Crapo second degree amendment.

An amendment by Senator Reid to impose Davis Bacon prevailing wage requirements on both the Clean Water SRFs and Drinking Water SRFs was agreed to by roll call vote with 12 ayes and 7 nays. Senators Baucus, Boxer, Carper, Chafee, Clinton, Graham, Lieberman, Murkowski, Reid, Voinovich, Wyden and Jeffords voted for the amendment. Senators Allard, Bond, Cornyn, Crapo, Thomas, Warner and Inhofe voted against the amendment.

An amendment by Senator Reid to create a small system assistance grant program was agreed to by roll call with 10 ayes and 9 nays. Senators Baucus, Bond, Boxer, Carper, Clinton, Graham, Lieberman, Reid, Wyden, and Jeffords voted for the amendment. Senators Allard, Chafee, Cornyn, Crapo, Murkowski, Thomas, Voinovich, Warner and Inhofe voted against the amendment.

An amendment by Senator Graham to create a water resources research program was agreed to by a vote of 13 ayes and 6 nays. Senators Baucus, Bond, Boxer, Carper, Chafee, Clinton, Graham, Lieberman, Murkowski, Reid, Voinovich, Wyden and Jeffords voted

for the amendment. Senators Allard, Cornyn, Crapo, Thomas, Warner and Inhofe voted against the amendment.

The committee passed the bill by voice vote with Senator Jeffords recorded as voting nay.

REGULATORY IMPACT STATEMENT

In compliance with Section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The bill does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 1961 would not impose unfunded mandates on local, State or tribal governments.

APPENDIX

ASSOCIATION OF STATE DRINKING WATER ADMINSTRATORS
1025 CONNECTICUT AVENUE, N.W. SUITE 903 WASHINGTON, D.C. 20036
(202) 293-7655 Fax (202) 293-7656 asdwa@erols.com www.asdwa.org

November 6, 2003

The Honorable James M. Inhofe, Chair
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Inhofe:

In the early Spring of this year, I met with your staff as part of a larger group of drinking water stakeholders to talk about a possible reauthorization of the State Drinking Water Revolving Loan Fund (DWSRF) and ASDWA's preferences for statutory changes if this part of Safe Drinking Water Act (SDWA) is reauthorized. ASDWA is the professional Association that represents the collective interests of the nation's state drinking water programs responsible for implementation of the SDWA. Since a considerable period of time has passed since our discussions of this topic, I wanted to take this opportunity to reiterate our principal interests in revisions to the DWSRF, along with a short rationale for our suggested changes.

ASDWA believes that the DWSRF has been one of the real success stories over the past several years in funding both infrastructure improvements as well as providing funds for key elements of state drinking water programs. However, we also believe that, without some strategic changes, certain disturbing trends in the national drinking water program will go unaddressed. In July of this year, we sent you a report entitled "Public Health Protection Threatened by Inadequate Resources for State Drinking Water Programs." This report highlighted a yawning and ever-expanding gap between the resources necessary to fund state drinking water programs and the funds actually available. To help "close this gap," ASDWA believes the changes to the DWSRF outlined below should be made.

Please note that the three suggested changes would require no additional Congressional appropriations. Rather, these revisions would simply allow more efficient use of appropriated funds. However, we continue to believe that currently appropriated funds are inadequate for the task at hand and recommend that funds be appropriated at authorized levels. (Although the SDWA authorized a total of $9.6 billion for Fiscal Years 1995 through 2003, only $5.52 billon has been appropriated through Fiscal Year 2003.)

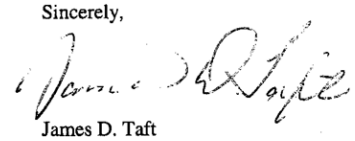
The following statutory changes to the DWSRF are recommended:

- **Increase the program set-aside necessary to administer the DWSRF from the current 4% to 6% (SDWA Section 1452(g)(2)).**
    - *Rationale: Experience in administering the fund over the past 7 years has shown that the transaction costs for states to administer these funds is more appropriately 6%.*
- **Remove the dollar-for-dollar match from the 10% set-aside for undertaking certain state drinking water program activities (SDWA Section 1452(g)(2)(D)).**
    - *Rationale: ASDWA estimates that approximately $114 million annually in appropriated funds goes unused by states because they are unable to allocate state funds required for this match. Note that this dollar-for-dollar match is on top of the 20% overall state match for use of funds (Section 1452(e)); thus, in effect, making this a 120% match requirement. Also, funds provided under Section 1443(a) for public water supply supervision programs only require a 25% match.*
- **Expand the permitted used of the 15% set-aside funds to implement source water *assessment* programs to include source water *protection* programs (SDWA Section 1452(k)(2)(D)).**
    - *Rationale: Congress authorized a one-time use of up to 10% of this set-aside for state use in developing source water assessment and delineation programs for all public water systems -- to be spent by 2003. However, it is imperative that the results of these assessments now be used for source water protection efforts and that adequate funding for these activities be provided.*

Drinking water protection is a daily undertaking rather than a one-time effort. Although the United States drinking water laws promise the safest drinking water in the world, the benefits of the SDWA are not guaranteed. A significant investment of effort and resources is needed to ensure full and effective realization of new and stronger public health protections. New science, new personnel skills, and new technologies are needed to protect public water supplies. The public health protection goals of the SDWA can only be achieved through successful state programs. ASDWA asks for your assistance, through adoption of the above listed recommendations, in ensuring that state drinking water programs have the tools and resources necessary to achieve our common goal of public health protection.

Should you have any questions about state drinking water program needs, please contact me at 202-293-7654.

Sincerely,



James D. Taft
Executive Director
Association of State Drinking Water Administrators

cc: Mr. Aloysius Hogan
Ms. Michele Nellenbach

February 5, 2004

The Honorable James M. Inhofe
Chairman
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

The Honorable James M. Jeffords
Ranking Minority Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Mike Crapo
Chairman
Subcommittee on Fisheries, Wildlife, and Water
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Bob Graham
Ranking Minority Member
Subcommittee on Fisheries, Wildlife, & Water
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Senators:

Rural Community Assistance Program

1522 K Street, N.W.
Suite 400
Washington, D.C.
20005

202.408.1273
888.321.RCAP
Fax 202.408.8165

www.rcap.org

On behalf of the Rural Community Assistance Program network, I am responding to your December letter in which you asked for recommendations to facilitate easier and more efficient use of the Drinking Water and Clean Water State Revolving Fund Programs.

The Rural Community Assistance Program (RCAP) provides small, rural communities technical assistance and training to help them meet the safe and clean water needs of their residents. Our services include assistance with identifying financial resources to develop, build and operate drinking water and wastewater treatment systems, training and technical assistance for complying with state and federal environmental regulations, and generally helping small rural communities ensure that they are capable of delivering on-going safe and clean water to their citizens. The National RCAP office represents a network of six regional RCAP affiliate organizations that work in all fifty States plus Puerto Rico and the US Virgin Islands.

RCAP often works with State SRF programs, as well as with other state and federal financing programs to help small communities finance water and wastewater infrastructure projects. We have a good understanding of what small systems struggle with on a daily basis as they provide safe and clean water to their residents and understand how well the SRF support their efforts. As you know, over ninety percent of safe drinking water violations are reported by small systems serving fewer than 3,500 people. At the same time, ratepayers of small systems bear four times the cost than do ratepayers living in larger communities for maintaining safe and clean water systems. Small systems rely heavily on public financing programs, such as EPA's State Revolving Fund Programs, to help maintain affordable water systems.

RCAP's mission is to help rural people improve the quality of life in their communities

Although each State operates SRF programs differently from each other, making it difficult to generalize recommendations for improvements that could apply to each State, we have identified common problems that seem to be present across most State SRF programs and offer recommendations to address these issues.

Encourage a More Simplified and Speedy Application Process: Most State SRF programs have lengthy and complicated application procedures. Typically, communities have to go through three application phases to access the SRF, which may take up to two years before financing is secured and a project can move forward. The lengthy process presents several difficulties to small communities that have neither the staff nor the resources to manage each phase. First, the process requires small communities to make a significant capital investment without any certainty funding will be available; second, for projects that require multiple funding sources, the approval process for the SRF presents timing difficulties for communities to coordinate with other financing agencies; and, third, for these communities, the SRF application requirements are often different from those of other financing authorities, generating further costs and delay for the community.

In order to be considered for funding by the SRF, a community must first apply for approval on the State's Priority List. This initial phase requires an investment by the community to determine the severity of environmental violations the project seeks to correct, the alternative technologies available to correct the deficiencies, and a fairly specific proposal of the total project cost. This initial cost can be several thousand dollars and there is no guarantee the project will be selected for the second phase, which is acceptance on the State's Intended Use Plan. Small communities, especially very small communities, typically do not have substantial reserve accounts to support these up front costs, however modest they may be.

In addition, small communities that require multiple funding sources to complete a project will not move forward with applications to other financing agencies until they have some assurance that they have been accepted for financing by the SRF, especially if the community is relying on the SRF for the project's core funding support. Once a community receives notice that its project has been accepted for funding, the community has twelve months to complete and submit all additional application documents. If a community cannot meet the twelve-month deadline, it risks losing SRF financing for that year. For a community that proceeds with applications to other funding sources and in the end is not able to meet the twelve-month SRF deadline, it not only loses the SRF financing, but could lose financing from other sources as well.

The documents and application materials a community must gather within this twelve month time frame are significant: full engineering studies and design specifications, secure site control and rights of ways, secure all permits, complete environmental assessments, develop legal documents, develop bid sheets, as well as identify and secure all other funding. Some States have coordinated among other water financing agencies and do not require different sets of documents for each

application element, however many more States do not coordinate SRF programs with other financing programs.

Small communities in many States find themselves in a race against the clock in completing this information and gathering additional funding before the deadline.

Arkansas avoids this dilemma altogether by discouraging applications requiring multiple funding sources, unless the community already has other funding in place. The following is a direct quote from Arkansas' Drinking Water SRF program materials: "The ideal is that the projects with the highest priority get funded first. In fact, it does not work that way. Most of the projects on the priority list cannot be funded exclusively through the DWSRF program. They typically require large amounts of grant funds that the DWSRF program cannot provide. The projects on the fundable list can be funded exclusively through the DWSRF or they already have other funding in place." (State of Arkansas DWSRF Intended Use Plan, page 2)

Recommendations to help reduce the complexity:

1. *Simplify application requirements at initial phase for small communities:* The initial application procedure for small communities seeking listing on a State's Priority List and Intended Use Plan should be simplified so that the costs of applying for initial eligibility and commitment of funds is not as high. For example, States could require a simple statement of environmental deficiencies, a reasonable proposal to correct the deficiency and a reasonable estimate of costs. This information should be sufficient enough to provide the State with a reasonable assessment on the severity of the problem and a reasonable idea of the costs to correct it so that it can declare it eligible to receive financing, but not too burdensome that the community is deterred from applying in the first instance. During the second phase of the application process, the community would be required to submit more detailed information regarding best available technologies and the more specific cost information.

2. *Require States to develop application materials/processes that conform to other funding sources available in that State.* Several States have already instituted a process whereby they will accept application documents used by other funding sources, for example the USDA RUS program or a State's CDBG program, for submission to a State's SRF program. This universal application process significantly reduces the burden on communities that do not have the capacity to develop three separate environmental assessments, for example; and, it helps minimize the time required to complete the information requests. All States should institute similar processes.

3. *Provide Technical Assistance to Small Communities accepted on the Intended Use Plans:* Once a State approves a community for funding on the Intended Use Plan, the State should automatically provide small

communities that request it with technical assistance to help them work through the application process to ensure they can meet the twelve month deadline. The USDA RUS program provides this technical assistance to communities that seek financing through its program, which has substantially increased the number of communities that successfully complete application requirements for the program.

4. *Authorize Small Systems Revolver Fund for Pre-Development Costs:* Authorize EPA to provide capitalization grants to qualified non-profit intermediaries to help small communities finance pre-development costs. While communities may be able to receive reimbursement once SRF finances the project, communities often do not have the cash up front to undertake these activities. The State of Virginia established a program that provides small communities assistance with preliminary engineering studies, which has helped to reduce this barrier to entry. By making pre-development financing available, small communities that otherwise may be deterred from seeking project financing to correct severe environmental deficiencies due to lack of these dollars, would have an incentive to go forward with a project.

Require a rural set aside in the Clean Water SRF: The Safe Drinking Water Act requires States to set aside 15% of the SRF for financing projects in small communities. This requirement has been a driving force for many States to institute policies and procedures that reduce application barriers to small communities. For example, historically States have shown an unwillingness to lend to communities that do not have a AAA bond rating, however for many small communities, this level of credit rating is impossible to achieve. Many States, particularly in the northeast, have reduced credit rating requirements for small communities that otherwise demonstrate credit worthiness and fiscal stability so that these communities can access SRF financing. We believe that a rural set aside in the Clean Water SRF program would incentivize States to further develop policies and procedures that facilitate greater access for small communities.

Establish Small Systems Revolving Fund for Small Systems Repairs: Provide a mechanism whereby small communities can receive assistance for making small systems repairs to maintain working systems, without having to apply directly to State SRF programs. Along with a financing gap that exists for small communities that need assistance to cover pre-development costs, there is also a financing gap that exists for communities that need small amounts of financing for small system repairs of up to $100,000. For these communities, the burden of going through the SRF process for a relatively small amount of financing is relatively high and in fact, many State SRF programs will not accept applications for projects costing less than a minimum amount of $100,000 or $350,000 because of the high transaction costs.

Communities in need of small amounts of financing will either forego the system repair and wait until the cost of fixing the system warrants submitting an

application to the SRF; or, submit an application for the SRF and wait for financing. For example, in July 2000, the City of Boyd, Minnesota, a community of 251 residents, applied to the State's SRF fund for a $100,000 loan for a water system repair. The community initially applied for financing in April 2000 and waited until December of 2000 to find out whether the financing was approved, eight months later.

We recommend an authorization for both the Clean Water and the Safe Drinking Water SRF programs that would allow EPA to provide capitalization grants to qualified non-profit intermediaries to provide small amounts of financing for system repairs. The fund would also be used for pre-development costs (see above discussion). By making this type of financing available to small communities, States are relieved of the demand for this type of financing and can focus on providing assistance to larger projects. If this type of financing were readily available, small systems would be encouraged to address system failures as they occur rather than wait until the problem becomes more costly.

Substantially Increase Available Technical Assistance: The Clean Water SRF program currently does not authorize funds for providing technical assistance to small communities. The Safe Drinking Water SRF only authorizes up to $15 million per year for technical assistance. RCAPs recommend that Congress substantially increase the amount of funding available to provide technical assistance to small communities. Small communities do not typically have the professionals on staff to manage the application process for SRF financing. By providing this service, either directly or thru use of non-profit intermediaries, such as the RCAP, the cost to small communities can be reduced and accessibility to the SRF program would be facilitated.

We believe that all of these recommendations will enhance the SRF's effectiveness and facilitate greater use of it by small rural communities. None of the recommendations we have outlined would reduce the SRF's primary goals of ensuring clean and safe drinking water to the American public. The recommendations retain State primacy to determine where SRF funding should be targeted, keeping in mind the special needs of small communities, while at the same time retaining EPA's regulatory interest in maintaining environmental standards. The main thrust of these recommendations is to provide greater assistance to small communities so that they are better able to work within the regulatory environment to achieve the common goal of providing clean and safe water to their residents.

Thank you again and please do not hesitate to contact me at 202-408-1273, or our government relations representative Patricia Sinicropi at 202-393-5225, if I can provide additional information.

Sincerely,

Randolph A. Adams, Ph.D.
Executive Director

Cc:
Ken Bruzelius – Midwest Assistance Program (MAP)
Bill French – Rural Community Assistance Corporation (RCAC)
Karen Koller – RCAP Solutions
John Squires – Community Resource Group (CRG)
Don Stricker – WSOS Community Action Commission (WSOS)
Mary Terry – Southeast Rural Community Assistance Project (SERCAP)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 20 2004

OFFICE OF WATER

MEMORANDUM

SUBJECT: Section 1464(d) of the Safe Drinking Water Act and Lead in School Drinking Water

FROM: Benjamin H. Grumbles
Acting Assistant Administrator

TO: Regional Administrators

Within the past month, EPA has received several questions regarding the applicability of Section 1464(d) of the Safe Drinking Water Act (SDWA), which addresses testing and other efforts relating to lead in school drinking water. The questions have been raised in response to recent reports of elevated lead levels in school drinking water in the Seattle, WA school district and other communities throughout the country. In 1996, a court decision in the U.S. Fifth Circuit of Appeals held that provisions of 1464(d) were unconstitutional. Based on its review of the case, EPA has determined that states are not required to carry out the program specified in Section 1464(d).

I want to emphasize that the Court's decision does not preclude states from carrying out such programs. We believe it is important to test for lead in schools and daycare facilities, as young children are the most vulnerable subpopulation. EPA strongly encourages states or local communities, as appropriate, to carry out testing programs for lead in school drinking water, and the Office of Water has begun several efforts to support these voluntary activities. I encourage your staff to work with me on these efforts.

Background

In 1988, Congress passed the Lead Contamination Control Act, which amended the SDWA to add several provisions addressing lead in school drinking water. Section 1464 (d) of the Act included three requirements related to establishment and implementation of state programs to test for, and remedy, lead contamination in schools.

1464 (d) Remedial Action Program –

(1) Testing and remedying lead contamination -Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public Availability - A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

(3) Coolers - In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988 all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute to lead in drinking water.

In 1996, the Fifth Circuit Court of Appeals decided ACORN v. Edwards, 81 F.3d 1387 (5th Cir. 1996), an appeal of a case in which the Association of Community Organizations for Reform Now (ACORN) had sued the State of Louisiana for failing to carry out several provisions related to section 1464 of the SDWA[1]. While the lower court's ruling dismissed ACORN's claims as moot, it ordered the State of Louisiana to pay attorney's fees and expenses to ACORN. The State appealed the decision, arguing, in part, that the provisions it had been charged with not meeting were unconstitutional. In its decision, the Fifth Circuit held that provisions in section 1464 were unconstitutional under the Tenth Amendment to the U.S. Constitution because they directly compelled the state to enact and enforce a federal regulatory program and provided no options for the State to decline the program. The Court reversed the lower court's decision which required the State to pay ACORN's attorney fees.

Relevance of the Decision to Enforcement of 1464(d)

While the decision technically only applies in the Fifth Circuit, the basis of the Fifth Circuit's ruling is still valid under controlling Supreme Court precedent. That precedent, in essence, states that Congress cannot "commandeer" a State by requiring it to carry out a federal program. New York v. United States, 505 U.S. 144 (1992). Such legislation is invalid under the Tenth Amendment to the U.S. Constitution. Since SDWA Section 1464(d) required a State to carry out a program to test and remediate lead contaminated water coolers in schools, a duty enforceable by citizen suit, it violated the Tenth Amendment.

The Court specifically addressed 1464(d)(1) and 1464(d)(3) as being unconstitutional. The ACORN decision explicitly did not address the second requirement regarding public availability of testing results (1464(d)(2)). This second requirement, however, might not be

[1] Acorn v. Edwards can be found at
http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=5th&navby=case&no=9430714cv0

severable from the first and third requirements, since it explicitly refers to testing conducted under a state program established under 1464(d)(1). The viability of this provision has not yet been determined by the courts.

Some have asked if EPA has enforcement authority to carry out the provisions under section 1464(d) or otherwise require states and/or systems to make the results of any testing conducted available to the public. The SDWA does not provide EPA with direct enforcement authority with respect to 1464(d) because this provision is not included in the list of "applicable requirements" under Section 1414 (EPA's enforcement authority). However, in appropriate cases, the Agency could consider using its authority under Section 1431 (EPA's emergency authority) or other authorities to require testing and making the results of testing public.

EPA Policy of Encouraging State and Local Efforts

Notwithstanding the ACORN decision, as a matter of public health policy, EPA encourages States and local school districts to test for lead in school drinking water, inform the public of results, and remove lead contaminated coolers from service. EPA will continue to encourage these types of programs and provide assistance, including technical guidance, to help states and schools carry out programs. EPA also encourages that such programs be designed within a framework that works to reduce children's risk of exposure to lead from all potential sources, including paint, dust and soil.

cc. Regional Water Division Directors
Regional Counsels
Regional Enforcement Division Directors
Susan Lepow, Office of General Counsel
William Sanders, Office of Children's Health Protection
Charles Auer, Office of Pollution Prevention and Toxics
Walker Smith, Office of Enforcement and Compliance Assessment
James Taft, Association of State Drinking Water Administrators

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2550, a bill to amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States, as ordered reported by the Senate Committee on Environment and Public Works on June 23, 2004, and revised by the committee staff on August 18, 2004.

Summary

CBO estimates that implementing this legislation would cost about $20 billion over the next 5 years, assuming the appropriation of the authorized amounts. The funds would be used by the Environmental Protection Agency (EPA) to provide grants to States and nonprofit organizations to support a wide range of water quality projects and programs. The Joint Committee on Taxation (JCT) estimates that enacting S. 2550 would reduce revenues by $222 million over the 2005–2009 period and by $1.14 billion over the next 10 years. Enacting the bill would not affect direct spending.

S. 2550 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 2550 is shown in Table 1. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of Estimate

For this estimate, CBO assumes that S. 2550 will be enacted in the fall of 2004, that the full amounts authorized will be appropriated for each year, and that outlays will follow the historical pattern of spending for EPA programs. Components of the estimated costs are described below.

TABLE 1. ESTIMATED BUDGETARY EFFECTS OF S. 2550, THE WATER INFRASTRUCTURE FINANCING ACT

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008	2009
CHANGES IN REVENUES						
Estimated Revenues[1]	0	–1	–7	–26	–64	–124
SPENDING SUBJECT TO APPROPRIATION						
EPA's Spending for Water Infrastructure and Grants Under Current Law.						
Authorization Level[2]	2,214	35	0	0	0	0
Estimated Outlays	2,172	1,908	1,648	1,050	363	16
Proposed Changes.						
Authorization Level	0	6,524	6,943	7,342	9,217	12,677
Estimated Outlays	0	1,141	2,366	4,127	5,914	6,871
EPA's Spending for Water Infrastructure and Grants Under S. 2550.						
Authorization Level[2]	2,214	6,559	6,943	7,342	9,217	12,677
Estimated Outlays	2,172	3,049	4,014	5,177	6,277	6,887

[1]Estimate provided by JCT.

[2]The 2004 level is the amount appropriated for that year to EPA for the following programs: clean water State revolving fund, safe drinking water State revolving fund, the national estuary program, and environmental finance centers. The 2005 level includes the amount authorized under current law for the national estuary program.

Revenues

This bill would increase the funds available under the clean water State revolving fund (SRF) and the safe Drinking Water SRF, which could result in some States leveraging their funds by issuing additional tax-exempt bonds. The JCT estimates that the consequent reductions in revenue would total $222 million over the 2005–2009 period and $1.14 billion over the next 10 years.

SPENDING SUBJECT TO APPROPRIATION

S. 2550 would authorize appropriations totaling about $43 billion over the next 5 years for EPA's water infrastructure and grant programs (see Table 2).

TABLE 2. SPECIFIED AUTHORIZATIONS IN S. 2550

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009
Clean Water SRF Grants[1]	3,200	3,200	3,600	4,000	6,000
Safe Drinking Water SRF Grants[1]	1,500	2,000	2,000	3,500	6,000
Small System Revolving Fund	25	25	25	25	25
Wet Weather Grants	250	250	250	250	250
Alternative Water Source Projects	25	25	25	0	0
Grants for Lead Removal in Schools and in the District of Columbia	60	40	40	40	0
Environmental Finance Centers	2	2	2	2	2
Technical Assistance for Nonprofits	25	25	25	25	25
Small Public Water Assistance Grants	1,200	1,200	1,200	1,200	200
Research and Demonstration Grant Programs	40	40	40	40	40
Sewage Control Technology Grant Program	100	100	100	100	100
Southeast Colorado Safe Drinking Water Grant	85	0	0	0	0
EPA Rate Study	1	1	0	0	0
National Estuary Program	0	35	35	35	35
Special Water Resources Study	9	0	0	0	0
National Academy of Sciences Study	2	0	0	0	0 ,
Total Authorization Level	6,524	6,943	7,342	9,217	12,677

[1]SRF = State revolving fund.

The bill would authorize the appropriation of $35 billion over the 2005–2009 period for EPA to provide capitalization grants for the SRF program ($20 billion for the clean water SRF program and $15 billion for the safe Drinking Water SRF program). States would use such grants along with their own funds to make low-interest loans to communities and grants to Indian tribes to construct wastewater treatment facilities and to fund other projects that would improve the quality of drinking water. This bill would make several revisions to those grant programs, including expanding the types of projects eligible for assistance, changing the formulas used to allocate grant money among the States, and extending the repayment terms for loans made by States.

This legislation also would authorize the appropriation of $1.25 billion over the 2005–2009 period for EPA to make grants to States to remedy sewage overflows (that is, the discharge of untreated wastewater) and stormwater runoff (that is, water from rain or snow that doesn't infiltrate the ground). S. 2550 also would authorize the appropriation of $5 billion over the same period for EPA to make grants to small public water systems to address the cost of complying with drinking water regulations. In addition, the bill

would authorize about $1.5 billion over the next 5 years for various other purposes, including establishing a small system revolving fund, several grant programs aimed at promoting innovations in technology and alternative approaches to water quality management, a grant program to address the removal of lead from schools and in the District of Columbia, a grant program for Southeast Colorado to support the construction of a water transmission line, and an EPA study of the rate structure of public water systems and treatment works.

Intergovernmental and Private-Sector Impact

S. 2550 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit State, local, and tribal governments by reauthorizing and expanding grants to administer the revolving funds for the Clean Water and Safe Drinking Water programs. In addition, it would provide specific financial assistance to rural communities, school systems (through the States), and the District of Columbia.

Estimate Prepared By: Federal Spending: Susanne S. Mehlman; Federal Revenues: Annabelle Bartsch; Impact on State, Local, and Tribal Governments: Gregory Waring; Impact on the Private Sector: Karen Raupp.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATORS JEFFORDS, BAUCUS, REID, GRAHAM, LIEBERMAN, WYDEN, CARPER, AND CLINTON

GENERAL STATEMENT

S. 2550, the Water Infrastructure Financing Act, reauthorizes the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) in an attempt to increase funding available for critical water infrastructure investments. However, this bill fails in several respects to modernize the State Revolving Funds and to truly meet the water infrastructure needs of our nation's communities.

BACKGROUND

S. 2550 amends two major statutes - the Federal Water Pollution Control Act (Clean Water Act) and Title XIV of the Public Health Service Act (Safe Drinking Water Act) to increase authorized funding levels for each of the State Revolving Funds (SRFs). The CWSRF was created in 1987 and the DWSRF was created in 1996. S. 2550 focuses on modernizing the CWSRF.

Each time the Clean Water Act was substantially amended, funding was a major issue. In 1972, 1987, and today, Congress struggled to identify the appropriate level of the Federal financial commitment to clean water. In testimony before the Senate Committee on Environment and Public Works in October 2002, marking the 30th anniversary of the Clean Water Act, former Senator George Mitchell (D-ME) outlined the history of the struggle to provide clean water funding.

> *"In 1972, Congress chose to significantly increase Federal participation in clean water programs. It peaked at $5 billion in 1979 and 1980.*
>
> *In 1981, President Reagan proposed the elimination of all funding for clean water unless Congress reduced the size and scope of the program. The Congress attempted to respond to the President's demand. Clean water funding was reduced from $5 billion a year to $2.4 billion a year. We reduced the types and numbers of projects that were eligible for Federal funding, and we reduced the Federal share of the cost for construction projects from 75 percent to 55 percent.*
>
> *A further step to reform Federal involvement was the adoption of a transition strategy to move the country away from construction grants toward what was then seen as an innovative mechanism called the State Revolving Fund. The 1987 amendments authorized almost $10 billion over 5 years for the phase-out of the construction grants program and $8.4 billion over 5 years for the SRF. We knew at that time that this level of funding was inadequate to fully meet our Nation's clean water needs, which then were estimated at between $75 billion and $100 billion. But this was a compromise struck between those who favored and those who opposed any Federal investment in clean water.*
>
> *Regrettably, despite our efforts, President Reagan vetoed the bill in 1986. In 1987, the Congress reenacted the*

bill. The President vetoed it again, but this time Congress overrode the veto and the Water Quality Act became law.

In 1987, we envisioned a situation where after the initial 5-year period of Federal investment, the SRF would begin to revolve on its own and the Federal investment in clean water programs would no longer be necessary. That was not the first choice of many of us, but it was necessary to get some legislation enacted to keep the process moving. Mr. Chairman, as you and the members of the committee know, Federal funding has continued, now at an annual rate of about $1.3 billion a year. I understand that the debate continues over the level of and the mechanism and the formula for distribution of the Federal investment in clean water . . ."

Clean water funding is not a new issue. In fact, it has been a focal point of debate surrounding clean water policy for decades.

DISCUSSION

Today, the need for additional investment in both water and drinking water infrastructure remains clear. There are three major estimates of the spending gap for water infrastructure, which range from $200 billion to $500 billion over 20 years. It is imperative that we take care of this looming problem.

In April 2000, the Water Infrastructure Network (WIN) released its first report, Clean and Safe Water for the 21st Century, which identified a clean water spending gap of $380 billion over 20 years and a drinking water spending gap of $300 billion over 20 years.

On September 30, 2002, EPA released The Clean Water and Drinking Water Infrastructure Gap Analysis which estimates the spending gap for clean water needs at $270 billion over 20 years. The Gap Analysis estimates the spending gap for drinking water needs at $265 billion over 20 years.

In May 2002, the Congressional Budget Office (CBO) released a report that estimated capital needs for clean water and drinking water infrastructure. Additional analysis by CBO estimated the spending gap for clean water needs between $132 billion and $388 billion over 20 years and the spending gap for drinking water needs at between $70 billion and $362 billion over 20 years.

Over the last several years, a large, bi-partisan coalition of Senators have sent letters requesting additional funds to the President, the Budget Committee, and the appropriators.

On April 18, 2002, Senators Sarbanes, Jeffords, and others joined colleagues in requesting $5.2B for appropriations in fiscal year 2003.

On June 20, 2002, Senators Jeffords, Smith, Graham, and Crapo also sent a letter to the Chairman and Ranking Member of the VA, HUD and Independent Agencies Subcommittee on the Appropriations Committee to request additional resources to the Clean Water and Drinking Water State Revolving Loan Funds.

On December 10, 2002, Senators Sarbanes and Jeffords along with thirty-one colleagues sent a letter to the President requesting his Fiscal 2004 budget provide $5.2 billion for SRFs.

On March 7, 2003, Senators Sarbanes, Jeffords, and Crapo sent a letter to the Senate Budget Committee requesting $5.2B for SRFs.

On April 2, 2003, Senators Jeffords and Sarbanes sent a letter to the Chairman and Ranking Member of the Budget Committee to insist that the Senate-approved funding levels for the Clean Water and Safe Water State Revolving Loan Funds be approved in conference.

On May 9, 2003, twenty-nine senators signed a bipartisan letter to the Chairman and Ranking Member of the Appropriations Committee to ask them to provide an allocation for the Subcommittee on VA, HUD, and independent Agencies that will provide $5.2 billion for the Clean Water and Safe Drinking Water Revolving Funds (SRF). This letter was circulated by Senators Jeffords, Crapo, and Sarbanes.

On March 2, 2004, thirty-one senators sent a bipartisan letter to the Chairman and Ranking Member of the Budget Committee to urge them to make clean water and drinking water infrastructure a priority and provide an allocation of $5.2 billion for the Clean Water and Safe Drinking Water Revolving Funds (SRF). This letter was circulated by Senators Sarbanes, Snowe, and Jeffords.

Senators Sarbanes, Crapo, and Jeffords offered an amendment to the Budget resolution in March 2004 to provide an allocation of $5.2 billion for the CWSRF and DWSRF. This amendment was accepted by voice vote.

On March 30, 2004, thirty-seven senators sent a bipartisan letter to the Chairman and Ranking Member of the Budget Committee to urge the acceptance in conference of the Senate-approved funding levels for the Clean Water and Safe Drinking Water State Revolving Fund (SRF), which provides $3.2 billion for the Clean Water SRF and $2 billion for the Safe Drinking Water SRF. This letter was circulated by Senators Carpo, Sarbanes, and Jeffords.

On May 11, 2004, fifty-three senators sent a bipartisan letter to the Chairman and Ranking Member of the VA, HUD, and Independent Agencies Subcommittee on the Appropriations Committee asking that they provide $3.2 billion for the Clean Water Revolving Fund and $2 billion for the Safe Drinking Water Revolving Fund in the FY05 appropriations bill. This letter was circulated by Senators Jeffords, Sarbanes, and Voinovich.

In the past two fiscal years, the Administration has sought a 37 percent cut in clean water infrastructure spending, proposing only $850 million for the CWSRF. For the past 2 years, Senators Crapo, Sarbanes, and Jeffords have offered an amendment to the budget resolution to increase funding for water infrastructure. Each year,

the amendment was accepted by the Senate, but failed to emerge from conference.

In the 107th Congress, the Committee on Environment and Public Works passed S. 1961, the Water Investment Act, which increased funding levels for the CWSRF and DWSRF to a total of $35 billion over 5 years. This bill both increased the authorized funding levels and took key steps to modernize the SRFs. S. 2550 as reported by the committee does not achieve the same result and does not represent a bi-partisan consensus on the best approach to increase water infrastructure funding.

SUMMARY OF ISSUES

First, although the underlying bill was successfully amended in committee to apply Davis-Bacon labor standards to the CWSRF and the DWSRF, the report inaccurately describes the evolution of these labor standards and their applicability to the SRFs.

Second, despite the recent revelations regarding the inadequacy of our current regulatory structure for lead in drinking water, the provision related to lead in drinking water that is included in this bill actually weakens rather than strengthens existing statutory requirements. In addition, it fails to take any action to address the No. 1 lesson learned from the Washington, D.C. lead in drinking water incidents - improving communication of health risks with the public. In fact, this section actually eliminates existing statutory requirements for the communication of the results of lead in drinking water tests conducted in schools with parents.

Third, this bill takes no action to ensure that Federal funds do not create an incentive for water infrastructure investments that conflict with local development plans. It fails to recognize and respond to the fact that by providing funds for water infrastructure investments, the Federal Government is, whether intentionally or unintentionally, providing incentives for particular types of development.

Fourth, this bill fails to even attempt to enhance compliance with the Clean Water Act by omitting a key provision included in S. 1961, the Water Investment Act, during the 107th Congress.

Fifth, the bill, after being successfully amended in committee, takes into account the special circumstances surrounding a series of specific water infrastructure needs, and it authorizes a series of grant programs. However, the bill also dictates spending decisions to States by creating a mandatory set-aside for water infrastructure grants, reducing the flexibility of States, reducing the funds available for water infrastructure projects, and duplicating the program-specific grants included in the bill.

Sixth, the formula replacing the existing Clean Water Act distribution formula does not allow for adequate transition time for States to adjust to revised allocations and unevenly distributes the burden of the re-allocation of funds to a small number of States.

Finally, the bill includes a project authorization for the Southeast Colorado Water Activity Enterprise at a cost of $85 million with no explanation for its selection for earmarking in the bill in lieu of many other similar projects.

DAVIS BACON

S. 2550 includes two provisions, sections 102 and 202, which assure that Davis-Bacon prevailing wage requirements will apply to all projects financed by federally capitalized State revolving funds under both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) for as long as these programs continue to be federally funded.

Davis Bacon: Clean Water Act

Section 102 of this bill applies the Davis Bacon prevailing wage standard to all funds distributed through the CWSRF. The majority report includes a skewed interpretation of existing law and the applicability of Davis Bacon to the CWSRF. Section 102 of S. 2550 clarifies that the prevailing wage requirements of the Davis-Bacon Act incorporated in the Clean Water Act (CWA) apply to construction of all projects financed with the assistance of State revolving funds.

Section 513 of the CWA provides that "all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality." The 1987 Water Quality Act shifted Federal support for construction of treatment works under the CWA from a program of direct Federal grants to a program of Federal capitalization grants to support State revolving loan funds (SRF) with the intention of phasing out the Federal capitalization grant program by the end of fiscal year 1994. As a result, section 602(b)(6) of the new Title VI of the CWA that created the SRF program provided that the Davis-Bacon prevailing wage requirements in section 513 of the Act would continue to apply to all projects constructed "before fiscal year 1995 with funds directly made available" by Federal capitalization grants. Notwithstanding the expectation that SRFs would become completely self-sufficient by fiscal year 1995, Congress has continued to appropriate funds for new Federal capitalization grants to the States' SRFs every year since.

Moreover, after enactment of the 1987 Water Quality Act, the Administrator of the Department of Labor's Wage and Hour Division concluded that, under newly enacted section 602(b)(6) of the CWA, the Davis-Bacon prevailing wage requirements in section 513 of the Act did not apply to "State matching funds required to be contributed into the SRF, moneys repaid to the SRF, or other moneys." Under this interpretation, Davis-Bacon prevailing wage requirements were applied the first time SRF funds supported by Federal capitalization grants were used to financially assist construction of a water treatment project; however, when funds repaid back to the SRF were "recycled" and used again to support construction of additional water treatment projects, Davis-Bacon would not apply. Furthermore, EPA determined that, after the end of fiscal year 1994, the Davis-Bacon prevailing wage requirements in section 513 of the CWA no longer applied even to the construction of treatment works financed by SRFs with funds made directly available by Federal capitalization grants.

The combined effect of these interpretations has undermined the longstanding policy of assuring that all construction workers employed on projects supported by CWA grants should not be paid less than locally prevailing wage rates. Accordingly, in order to correct the evaporation of Davis-Bacon prevailing wage protection for workers employed on construction projects that continue to be financially assisted by EPA notwithstanding Congress' expectation in 1987 that Federal support for this activity would cease at the end of fiscal year 1994, section 102 of S. 2550 would amend section 603(c) of the CWA to provide that the Davis-Bacon prevailing wage requirements in the Act will once again apply to construction of all projects assisted in whole or in part by SRFs with Federal funds, including those supported by funds directly made available through Federal capitalization grants and those supported by "recycled" Federal funds.

Davis Bacon: Safe Drinking Water Act

Section 202 of S. 2550 clarifies that the prevailing wage requirements of the Davis-Bacon Act incorporated in the Safe Drinking Water Act (SDWA) apply to construction of all projects financed with the assistance of State revolving funds.

The SDWA was originally enacted in 1974. The Act authorized EPA to make grants to assist in the development and demonstration (including construction) of projects that exhibit new or improved methods, approaches or technology for providing a safe supply of drinking water to the public. Section 1450(e) of the SDWA includes a broadly worded provision that directs the EPA Administrator to "take such action as may be necessary to assure compliance with provisions of the [Davis-Bacon Act]." This provision not only obligates the EPA Administrator to include Davis-Bacon prevailing wage requirements in contracts for the construction projects to which EPA or the Federal Government is a direct party, but also obligates the Administrator to insure that such requirements are applied to construction projects supported by grants and other forms of assistance provided by EPA pursuant to authorization under the SDWA. Any other interpretation of Section 1450(e) would render it redundant inasmuch as the Davis-Bacon Act, itself, is automatically applicable by operation of law to all contracts in excess of $2,000 to which an agency of the federal government is a party for construction of public buildings and public works.

Thus, when Congress enacted the Safe Drinking Water Act Amendments of 1996, which created the State Revolving Fund (SRF) program that provides annual capitalization grants to each State in order to fund an SRF that provides financial assistance to local agencies to facilitate compliance with EPA's national primary drinking water standards, it was unnecessary to include a separate Davis-Bacon provision. Nevertheless, EPA administratively determined that the Davis-Bacon prevailing wage requirement in the SDWA does not apply to construction projects assisted by the SRFs.

In order to clarify Congress' original intent, section 202 of S. 2550 would amend section 1450(e) of the SDWA to make it clear that Davis-Bacon requirements apply to all construction projects assisted in whole or in part by grants, loans, loan guarantees, refinancing, or any other form of assistance provided under the SDWA,

including assistance provided by SRFs with funds directly made available from Federal capitalization grants or with "recycled" funds made available by repayment of Federal capitalization grant funds. As such, section 202 of S. 2550 would not expand application of Davis-Bacon prevailing wage requirements to the SRFs authorized under the Safe Drinking Water Act Amendments of 1996, but rather make clear Congress' original intent that those requirements apply to all construction projects assisted under the SDWA.

LEAD IN DRINKING WATER

Lead occurs naturally in the environment. However, during the industrial revolution and subsequent years, lead became a commonly used product in solder, paint, and other industrial processes. Today, lead is commonly used in ammunition, solder and lead pipes, ceramic glazes, computer monitors, and medical, scientific and military equipment.

Lead exposure occurs today from a variety of sources including air (burning fuel, lead smelters, burning solid wastes), drinking water (lead pipes and solder), bodies of water (contaminated by industrial waste or air deposition), dust and soil around landfills and in old urban areas with lead paint, food (accumulates in food chain/food storage), and paint (banned in 1978.)

Health effects of lead depend on the extent of the exposure. The target system for chronic exposure is the nervous system. Hearing loss, high blood pressure, and anemia can result. High levels damage the brain and kidneys and cause miscarriage.

Lead exposure is particularly dangerous for children who retain about 68 percent of the lead that enters their bodies while adults retain about 1 percent, according to the Environmental Health Education Center, University of Maryland School of Nursing. Children exposed to lead may experience low birth weight, growth retardation, mental retardation, learning disabilities, muscle cramps, stomach cramps, anemia, and kidney and brain damage. Lead is also particularly harmful during pregnancy, affecting the unborn child or leading to miscarriages and stillbirths.

The current blood lead level standard, set by the Centers for Disease Control (CDC), is 10 parts per billion. The CDC Advisory Committee for Blood Lead Levels is currently undertaking a review to determine if this number should be reduced. This review is in part spurred by a major study published in the New England Journal of Medicine on April 17, 2003 which found that even blood lead level concentrations below 10 micrograms per liter (or 10 parts per billion) are harmful to children. A working group of the CDC Advisory Committee completed a report in February 2004 indicating that there are adverse effects of blood lead levels below 10 parts per billion.

EPA Regulations on Lead in Drinking Water

Before 1991, EPA regulations included a Maximum Contaminant Load of 50 parts per billion for lead in drinking water. In June 1991, the EPA issued the lead and copper rule (56 FR 26460), which eliminated the MCL and established a new framework for dealing with lead in drinking water. The Maximum Contaminant Level Goal (MCLG) was set at zero. As described in the report for

S. 2550, in lieu of an enforceable standard for lead content in drinking water, the rule establishes a sampling program with a trigger threshold above which public water systems have to take steps to change corrosion control, treat source water, replace lead service lines, and conduct public education.

In general, public water systems are required to sample homes in areas where lead could be expected to be present in drinking water (due to lead service lines, date of construction of the homes, or other factors). If the 90th percentile of the samples taken exceeds 15 parts per billion, the requirements of the rule are triggered. If a system has extremely low lead levels for two consecutive 6-month monitoring periods, it can move to monitoring once every 3 years.

Once the 90th percentile requirement is triggered, the public water system must take the following actions:

1. Water quality parameter monitoring used to determine water corrosivity.
2. Public Education: specific requirements in regulations regarding text of announcements. Billing inserts must be sent directly to customers, newspaper notices and public service announcements required. There are no public education requirements if the 90th percentile threshold is not triggered.
3. Source Water Monitoring and Treatment: sampling and treatment changes to reduce lead concentration. State involvement in establishing maximum permissible lead levels in source water. In Washington, D.C., that function would be performed by EPA Region III because Washington, D.C. does not have primacy over the administration of the Safe Drinking Water Act.
4. Corrosion Control Treatment: Study required to identify changes in corrosion control required, follow-up monitoring required. Study is allowed to take 18 months and systems have 24 months to install the revised corrosion control treatment. This process could take over 3 years, during which time a public water system would remain in compliance with the lead and copper rule.

If a system completes these actions and continues to exceed the 90th percentile requirements, they are required to monitor and/or replace lead service lines. The public water system must replace 7 percent of their lead service lines per year OR they may test the water in the service line and if all samples are less than 15 parts per billion the system may "count" the service line as replaced. This type of sampling is conducted in the home, where residents run their faucet for a longer period of time to get to the water in the pipe.

In summary, the effectiveness of the lead and copper rule to reduce lead exposure through drinking water depends heavily on public education. The extended time periods during which corrosion control procedures can be modified while the water system remains in compliance make it imperative that adequate public education occurs to ensure that people take precautionary steps to reduce lead exposure while water chemistry is being modified.

In addition, because public water systems with extremely low lead levels can move to a monitoring program that requires testing only every 3 years, it is conceivable that public water systems that have switched to chloramines to comply with the disinfection by-product rule or for other reasons have not tested their systems for lead contamination for a 3-year period, raising concern about the degree to which the experience of Washington, D.C. could be a national problem.

It is worth noting that under the Safe Drinking Water Act, leaded solder in homes was banned as of 1987. However, "lead-free" faucets are defined as containing 8 percent lead. The industry has developed voluntary leaching standards for those components that typically dispense water for human consumption. Based on the information available to date, these voluntary standards do not apply to bathtub faucets.

Washington, D.C. Experience

Earlier this year it was first reported that lead levels in the D.C. public water system were significantly higher than Federal guidelines, and had been so for more than 2 years. The report for S. 2550 provides a detailed summary of the events in Washington, D.C. with regard to lead in drinking water.

Committee Action

In response to the public health risk and the public outrage at the handling of the Washington, D.C. situation, Senator Jeffords and the democratic members of the Senate Committee on Environment and Public Works requested a hearing of the full committee on this issue. On April 7, 2004, the Fisheries, Wildlife, and Water Subcommittee held a hearing entitled, "Detection of Lead in the D.C. Drinking Water System." Testimony was received from Benjamin Grumbles, Acting Assistant Administrator of the Office of Water at EPA, Donald Welsh, Director, Region III, EPA, Jerry Johnson, General Manager, District of Columbia Water and Sewer Authority, Dr. Daniel Lucey, Interim Chief Health Officer, District of Columbia Department of Health, Thomas Jacobus, General Manager, Washington, Aqueduct, Baltimore District, U.S. Army Corps of Engineer's Gloria Borland, Dupont Circle Parents, Dr. Jody Lanard, M.D., Risk Communication Consultant, and Dr. Dana Best, M.D., Children's National Medical Center.

On May 4, 2004, Senator Jeffords introduced the "Lead-Free Drinking Water Act of 2004" with Senator Sarbanes and Delegate Holmes-Norton, and Congressman Waxman introduced the House companion bill. This legislation included a comprehensive approach to improving the current regulatory structure for lead in drinking water, based on the lessons learned from the Washington, D.C. incident. The bill was referred to the Senate Committee on Environment and Public Works, and no action has been taken. A short summary of the bill follows:

LEAD-FREE DRINKING WATER ACT OF 2004

To amend the Safe Drinking Water Act to ensure that the District of Columbia and States are provided a safe, lead-free supply of drinking water.

- Requires the Environmental Protection Agency (EPA) to review and revise the national primary drinking water regulation for lead within 18 months after the date of enactment. The revised regulation shall establish a maximum contaminant level (MCL) for lead in drinking water as measured at the tap, or, if EPA determines that it is not practicable to establish such a level, the Agency shall establish a treatment technique to prevent adverse health effects. Requires that any new standard be at least as protective as the current regulations.
- Accelerates and ensures complete replacement of lead service lines in systems that exceed the MCL or action level for lead in national primary drinking water regulations:
  - Upon exceeding the MCL or action level for lead under the national primary drinking water regulations, a water system must replace at least 10 percent of its lead service lines annually until they are gone.
  - Priority is given to those homes with high lead test results and those that provide drinking water to infants, children, and pregnant and lactating women.
  - Eliminate the existing loophole allowing systems to avoid replacing lead service lines by conducting water tests.
  - Establishes community water systems or nontransient noncommunity water systems as the responsible entity to replace lead service lines, including those owned by homeowners. Gives homeowners the final authority to determine if their lead service line is replaced.
- Revamps public notice requirements.
  - Upon exceeding the MCL or action level for lead, community water systems or nontransient noncommunity water systems will, within 30 days, deliver notice to all customers of the scope of the testing, the results, and corrective actions to be taken. A warning will be provided on all water bills regarding the presence of a public health risk from high lead levels in the drinking water. Repeat notice will be provided every 90 days as long as the exceedance continues.
  - Community water systems or nontransient noncommunity water systems will provide, within 14 days of the receipt of results, notification to each home tested of their own results, the scope of the testing conducted and the results, and referrals for any required medical intervention.
  - Requires special emphasis on alerting parents, caregivers, and other individuals and entities of the significantly greater risks to infants, children and pregnant and lactating women posed by lead contamination of drinking water; and encouraging individuals and entities when appropriate to immediately modify behavior to minimize exposure to lead in drinking water.
  - Requires the EPA to establish verification procedures to determine the effectiveness of public notification within 6 months.
- Establishes routine public education on lead in drinking water.

- Requires routine public education programs at community water systems or nontransient noncommunity water systems that is designed to improve the general level of public understanding of the risks posed by lead contamination and protective actions that can be taken. EPA may waive this requirement for systems that have not exceeded the action level for lead since June 7, 1991.

• Requires that, upon exceeding the MCL or action level for lead, community water systems or nontransient noncommunity water systems provide on-location filters certified for lead removal to each residence, school, and day care facility in the service area of the community water system or nontransient noncommunity water system that could reasonably be expected to experience lead contamination of drinking water in excess of the MCL or action level for lead at any time after the date of exceedance.

- Priority is given to vulnerable populations, such as infants, children, and pregnant and lactating women, and to residences, schools, and day care facilities that should have priority based on testing results. Filters are to be explicitly made available regardless of whether individual residences are known to have lead service lines.

• Establishes testing requirements and corrective actions for Federal buildings.

• Requires one-time nationwide testing for lead in drinking water at all community water systems or nontransient noncommunity water systems to be completed within 18 months of enactment.

• Modifies monitoring protocols to ensure that tests conducted under the national primary drinking water regulations for lead are conducted at 6 month intervals, that a statistically relevant sample is used that is fully representative of all types of residential dwellings and commercial establishments, and that increased testing is conducted after any substantial modification in the treatment of drinking water or during any period in which the drinking water exceeds the MCL or action level for lead.

• Requires that community water systems and nontransient noncommunity water systems re-evaluate and optimize corrosion control plans within 1 year of a change in water treatment or an exceedance of the MCL or action level for lead.

• Establishes a lead service line replacement fund that authorizes $200 million per year for 2005 through 2009. Provides $40 million per year to the District of Columbia.

• Revises current Safe Drinking Water Act definition of "lead-free" as 8 percent lead to 0.2 percent lead and makes it unlawful to import, manufacture, process, distribute in commerce, or install in any residence anything but lead-free plumbing fixtures and components as of January 1, 2005.

• Establishes requirements for testing and removal of lead in schools. Authorizes $30 million per year for this purpose.

Committee Mark-Up of S. 2550, June 23, 2004

Amendment Offered by Senator Jeffords

During the mark-up of S. 2550 on June 23, 2004, Senator Jeffords offered an amendment based on the Lead-Free Drinking

Water Act of 2004 to take the first critical steps to address the most egregious issues that were highlighted by the Washington, D.C. lead in drinking water crisis. This amendment was endorsed by Consumer Federation of America, Clean Water Network, Children's Defense Fund, and representatives of the Washington, D.C. parents group involved in this issue. The residents of DC wrote: "It is our hope that other mothers in this country will not have to experience the frustration, anger, and fear that we have during the many months that this crisis has dragged without resolution."

First, the amendment strengthened existing public notice requirements in several key ways. As described in the report to S. 2550, one the leading complaints against WASA throughout this period is that the agency failed to communicate effectively with the public about how many homes had exceeded the action level (and by how much) and what residents should do to protect themselves. The effectiveness of the public notification of the presence of lead in drinking water is the crux of the Lead and Copper Rule. In testimony before the Subcommittee on Fisheries, Wildlife and Water on April 7, 2004, the Director of EPA's Region III, Donald Walsh, stated, "public education efforts were ineffective, and we believe, not fully compliant in all instances with EPA rules." Additional testimony from a risk management expert and D.C. residents corroborated the view that public notification and education efforts were ineffective.

Specifically, the Jeffords amendment took the following steps to revamp public notice requirements:

- Upon exceedance of the MCL or action level for lead, community water systems or nontransient noncommunity water systems, within 30 days, must deliver notice to all customers of the scope of the testing, the results, and corrective actions to be taken. A warning will be provided on all water bills regarding the presence of a public health risk from high lead levels in the drinking water. Repeat notice will be provided every 90 days as long as the exceedance continues.
- Community water systems or nontransient noncommunity water systems will provide, within 14 days of the receipt of results, notification to each home tested of their own results, the scope of the testing conducted and the results, and referrals for any required medical intervention.
- Requires special emphasis on alerting parents, caregivers, and other individuals and entities of the significantly greater risks to infants, children and pregnant and lactating women posed by lead contamination of drinking water; and encouraging individuals and entities when appropriate to immediately modify behavior to minimize exposure to lead in drinking water.
- Requires the EPA to establish verification procedures to determine the effectiveness of public notification within 6 months.

Despite the fact that the failure of the public notification system is recognized as one of the most prominent concerns heard from Washington, D.C. residents, S. 2550 as amended by the Crapo amendment on lead takes no action to reform or improve the public notification system associated with the Lead and Copper Rule.

Second, the amendment required the removal of 10 percent of all lead service lines per year until they are gone, once a public water

system exceeded the action level for lead. It is commonly believed that the major cause of the Washington, D.C. lead in drinking water incident was caused by increasing corrosivity of the water supply, leading to leaching of lead from lead service lines and plumbing components. The solution selected by the EPA and WASA suggests that controlling the corrosivity of the water supply will reduce lead content in the water system. On August 23, 2004, WASA began adding orthophosphate to the drinking water supply through the city to reduce the corrosivity of the water supply in an effort to reduce lead levels. EPA estimates that it will take 6 months to detect a reduction in lead levels.

The current regulation requires replacement of 7 percent of lead service lines per year only until a system no longer exceeds the action level. In addition, the current rules allow a public water system to "test" the water in the service line and if all samples are less than 15 parts per billion the system, to "count" the service line as replaced. The current regulations ensure only one thing - that public water systems that have lead service lines will never actually replace all of them. As described in the report to S. 2550, there is a general consensus that the cause of the lead problems in Washington, D.C. was corrosive water causing lead to leach from lead service lines. The Jeffords amendment closed the loophole allowing public water systems to "test out" of lead service line replacement requirements. It required the removal of lead service lines from public water systems with lead contamination problems, ensuring that the main source of that lead would be eliminated. It authorized $200 million per year for the replacement of lead service lines and earkmarked $40 million per year for this purpose. Section 210 of S. 2550 takes no action to eliminate lead service lines.

Third, the Jeffords amendment revised the current Safe Drinking Water Act definition of "lead-free" from 8 percent lead to 0.2 percent lead and made it unlawful to import, manufacture, process, distribute in commerce, or install in any residence anything but lead-free plumbing fixtures and components as of January 1, 2005. The fact that a Federal statute permits the advertisement of products as "lead-free" when they actually contain 8 percent lead is an egregious violation of the public trust. In addition, since the adoption of this definition, much progress has been made in the development of lead-free alternatives, which are currently sold on the open market by companies such as Cambridge Brass. Phasing out lead in plumbing components, coupled with the replacement of lead service lines, would have ensured that lead is absent from our drinking water. S. 2550 as amended by the Crapo amendment takes no action to modify this definition. Finally, the Jeffords amendment required the testing and remediation of lead contamination in schools and authorized $30 million annually for this purpose. This amendment made several changes to existing law. The main improvements this amendment makes over current law, section 1464 of the SDWA, are:

- it increases funds available to States to reimburse local educational agencies for costs incurred as they conduct the testing and remediation of lead in schools;

• it provides for the Administrator of the EPA to carry out a program for the testing and remediation of lead contamination in schools if States fail to do so;

• it extended the expired authorization for $30 million per year for these purposes.

Section 1464 of the SDWA also requires that test results for lead in drinking water in schools be made available to the public and that parents, teachers, and employee organizations are notified of the availability of those test results. The Jeffords amendment required that testing and remediation occur, that funds were available to States for this program, that people were notified of the results, and that, if States failed to execute a program, the EPA would execute a program to ensure that testing and remediation of lead in schools would actually occur.

The Jeffords amendment would have helped to restore public confidence in a system that is broken and to ensure that lead in our water is a thing of our past. This amendment would have ensured that our children's schools will be lead-free, that citizens will know when their water systems test high for lead, that the words "lead-free" will actually mean "lead-free", and that lead service lines will not be allowed to sit leaching lead for decades in public water systems.

The Jeffords amendment was defeated by a vote of 10–9. Voting for the amendment were Senators Jeffords, Baucus, Reid, Graham, Lieberman, Boxer, Wyden, Carper, and Clinton. Voting against the amendment were Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas, and Allard.

Amendment Offered by Senator Crapo

Instead of adopting the Jeffords amendment which would have taken substantive action to reduce lead in drinking water, the committee adopted the Crapo amendment regarding lead which, instead of enhancing public health protection as a result of the Washington, D.C. lead in drinking water crisis, actually rolls back existing requirements. Section 210 of S. 2550 establishes as similar reimbursement program to that in existing law, section 1465 of the SDWA, and that established by Senator Jeffords' amendment. Section 1465 in current law provided funds to assist States in meeting the requirements of section 1464 which required that States establish an assistance program for local educational agencies to test and remediate lead contamination in drinking water from coolers and other sources in schools. This section also required that results of testing be available to the public, including teachers, other school personnel, and parents. It also required remediation of non lead-free drinking water coolers in schools within 15 months of October 31, 1988. The Jeffords amendment mirrored these provisions.

The majority report describes the results of the court case, *Acorn v. Edwards* (U.S. 5th Circuit, 1996), in which the Court struck down as unconstitutional Sections 1464(d)(1) and (d)(3) because they violated the 10th Amendment of the Constitution. The report quotes a portion of the Court's decision which stated, "that section 300j–24(d) [SDWA Section 1464(d)] is an unconstitutional intrusion upon the States' sovereign prerogative to legislate as it sees fit." The report cites this Court decision as justification for the deletion

of the testing and remediation program and the public notification requirements of Section 1464.

However, the majority report excludes the first half of this sentence in *Acorn v. Edwards*, which explained that the reason for the Court's finding was because States did not have the option to decline regulation. "Because *§ 300j–24(d)* deprives States of the option to decline regulating non-lead free drinking water coolers, we likewise find no merit to this argument and conclude that *§ 300j–24(d)* is an unconstitutional intrusion upon the States' sovereign prerogative to legislate as it sees fit." *Acorn v. Edwards, 81 F. 3d 1387 at 1394 (1996)*. The Jeffords amendment solved this problem by requiring that, if a State did not execute the testing, remediation, and public notification requirements, the EPA would be required to perform this function. Thus, the Jeffords amendment established a program to test and remediate lead in drinking water in schools, provided funds for States to implement the program, ensured that this program would actually occur by requiring EPA to perform these functions if States did not – thereby resolving the concerns of the Court with regard to the 10th Amendment, and retained existing public notification requirements for test results.

Section 210 of S. 2550, as offered by Senator Crapo, strikes all of the testing and remediation requirements of section 1464 and, in lieu of those requirements, authorized a *voluntary* reimbursement program for States who choose to take action to address lead in schools. Section 210 of S. 2550 *specifically excluded* provisions making test results available to the public. Instead of responding to the public outrage over the lack of information provided about the Washington, D.C. lead incident, section 210 of S. 2550 amendment actually *removes* existing public notification requirements in current law. Instead of responding to the public concern regarding lead in schools, section 210 of S. 2550 actually *rolls back* existing requirements for testing and remediation of lead in schools by turning mandatory requirements into voluntary requirements. Overall, section 210 of S. 2550 fails to take meaningful action to enhance protections from lead in drinking water provided by our current statutes and regulations and, instead, rolls back existing protections designed to protect children from exposure to lead in schools.

DEFERENCE TO LOCAL GOVERNMENTS

The Water Infrastructure Financing Act fails to take action to ensure that Federal funds do not create an incentive for water infrastructure investments that conflict with local development plans. It fails to recognize and respond to the fact that by providing funds for water infrastructure investments, the Federal Government can often drive local decisions about development and growth.

Commercial and residential development requires substantial infrastructure to support it. It requires investment from the public sector for roads, water lines, and school and public safety resources, as well as private infrastructure such as power and telephone lines. Public officials have developed infrastructure-related tools for managing growth. For example, local officials may establish urban service areas, adopt adequate public facilities ordinances, levy impact taxes or fees, or use similar mechanisms to in-

ternalize the true economic costs of new development. In addition, an increasing number of States have recently enabled or required local jurisdictions to manage land more efficiently through the designation of growth areas or application of State criteria for funding infrastructure.

Usually costing of millions of dollars per mile, capital investments in new water infrastructure are among the most expensive forms of public infrastructure needed to support development. Sewage treatment plants often cost millions of dollars each, and water lines cost several hundred thousand dollars per mile, costs that are not insignificant. Moreover the costs of operation and maintenance of infrastructure are substantial and continuing.

Infrastructure construction is not only capital intensive; it has a significant effect on the environment. In a report from the Open Lands Project, a Chicago-based urban conservation group, the group found that water infrastructure plans which are not coordinated with development plans such as land use plans, watershed plans, and transportation plans may cause environmental problems. The report states, "the effect of urbanization on water quality may be the most important 'environmental impact' of the entire [planning] process, and yet it remains unexamined and unaddressed." The report also found that because infrastructure plans were not sufficiently coordinated with development plans, "the State has allowed communities to extend sewer lines into areas that include wetlands, flood plains and other environmentally sensitive property."

State and local officials bear the responsibility of making choices about their own approaches to development. Because the Federal Government plays a prominent role in the financing of water infrastructure, Congress is also partly responsible to ensure that funding for water infrastructure through the SRF solves existing water quality problems and complements, rather than conflicts with, ongoing State or local initiatives to manage growth and development.

Senator Jeffords offered an amendment during the business meeting on June 23, 2004 to address this issue. The amendment would have taken four specific actions:

- Similar to the priority system amendments in section 105 of S. 2550, States would give additional priority in distributing funds from SRFs to projects that are consistent with existing local land use, transportation, and watershed plans, and to those projects that review options for urban waterfront development or brownfields revitalization that may be conducted in conjunction with the project. This section would not require that any new plans be created. Instead, it depends on existing plans created by local governments as the guide. If water infrastructure projects are consistent with these guides, they would receive additional priority. If not, they would remain eligible, but would simply not receive additional priority for this particular factor;
- The existing continuous planning process required by section 303(e) of the CWA would be revised to incorporate applicable regional or local land use plans. This section does not add any new planning requirements. It requires only that regional or local land use plans be reviewed as part of the existing continuous planning process;

• A National Academy of Sciences study would be authorized on the impact of water and wastewater investments on local land use development patterns; and

• Extra priority would be given to States when distributing SRF funds to an explicit list of waterfront redevelopment projects. Projects included in this list are:

Windsor, Vermont, Riverside Redevelopment.
St. Louis, Missouri, Brownfield Pilot Program.
Hudson River Park, New York.
Fields Point, Rhode Island.
Milwaukee, Wisconsin, Riverfront Development.
Lawrence Gateway Environmental Restoration Project.
Detroit River, Michigan, Master Plan.
Ohio Riverfront Sturdy, Cincinnati, Ohio.
Montgomery, Alabama, Riverfront Development.
Wabash Riverfront Development, Indiana.
Mississippi Riverfront, Tennessee.

The Jeffords amendment failed in committee by a vote of 10–9 with Senators Jeffords, Baucus, Reid, Graham, Lieberman, Boxer, Wyden, Carper, and Clinton supporting the amendment and Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas, and Allard voting against the amendment.

INCENTIVES FOR COMPLIANCE

S. 1961, the Water Investment Act, passed by the Committee on Environment and Public Works in the 107th Congress included a provision that treatment works found to be in significant non-compliance with the Clean Water Act are prohibited from receiving assistance other than those funds that would be needed to bring a system into compliance in accordance with an enforceable administrative or judicial order or other than those funds for planning, design, or security. The exceptions in that bill ensured that utilities that are seeking to return to compliance are still eligible, that planning and design functions are still eligible, and that security improvements are still eligible.

This provision would provide an added incentive for utilities to maintain compliance with the CWA. It targets the worst offenders–the primary criteria for significant non-compliance are:

• exceed specific conventional pollutant limits by 40 percent or specific toxic pollutantlimits by 20 percent at a given discharge point for two or more months during the two consecutive quarters;

• violate any monthly effluent limit at a given point by any amount for any four or more months during the two consecutive quarters.

A recent EPA report by the Office of Enforcement and Compliance Assistance documented extensive non-compliance with the CWA. In 2002, 83 percent of facilities in SNC were repeat SNCs. In 2001, 25 percent of major facilities were in SNC. Sixteen percent–29 percent remained in that status for 2 years or longer. Of those that returned to compliance, there is a 50/50 probability that they will return to SNC again within 2 years.

Given the large number of facilities in SNC and the apparent frequency with which they return to SNC, it is clear that incentives to encourage compliance are required. However, S. 2550, the Water

Infrastructure Financing Act, includes no provisions to provide an incentive for compliance or to ensure that Federal funds are spent in a manner that leads to compliance. A provision similar to that included in section 103 of S. 1961, the Water Investment Act, in the 107th Congress was included in the substitute amendment offered by Senator Jeffords which failed by a vote of 10–9. Voting in support of the amendment were Senators Jeffords, Baucus, Reid, Graham, Lieberman, Boxer, Wyden, Carper, and Clinton. Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas, and Allard voted against the amendment.

GRANTS

S. 2550, as amended, recognizes that there are some needs that should be met above and beyond the funding levels authorized in the Clean Water State Revolving Fund. In particular, wet weather, stormwater, and small community needs are some of the most pressing water quality problems facing municipalities today. The second degree amendment offered by Senator Crapo to the Voinovich amendment on this topic included amendments filed by Senators Jeffords (wet weather and stormwater), Warner (Chesapeake Bay), Chafee (National Estuaries), Graham (alternative water source development) and Reid (small systems).

However, the bill also dictates spending decisions to States by creating a mandatory set-aside for water infrastructure grants, reducing the flexibility of States, reducing the funds available for water infrastructure projects, and duplicating the program-specific grants included in the bill. On September 14, 2004, the Council of Infrastructure Financing Authorities (CIFA) wrote to the committee stating, "This provision is troubling in several respects. Initially, it seems at odds with the goal you support of allowing States maximum flexibility in determining how best to meet their individual water quality priorities. An arbitrary set aside runs counter to the primary role provided to the States in managing the SRFs." CIFA goes on to say:

> *"The legislation specifies no basis for the grant set aside. The requirement is not directed toward addressing hardship situations nor is any financing need identified that would require a grant in lieu of a loan. Further, the language permitting a waiver of the grant requirement if loan applications are processed timely leaves in even greater doubt the possible rationale for the set aside requirement.*
>
> *While there is no apparent benefit deriving from the set aside, there are a number of potential adverse impacts. A set aside to provide grants is contrary to the underlying purpose of the revolving fund to continually maximize available resources, derived from Federal capital grants, State matching dollars and the loan repayment stream, to finance water infrastructure. The cumulative effect of a 10 percent set aside, not subject to repayment to the SRF, would be a significant diminishing in funds revolving and thus less financing ultimately available to communities.*

In the case of States that leverage SRF funds, the negative impact of the set aside is multiplied. States have discretion to use the Federal capitalization grants as collateral to borrow in the public bond market to increase the pool of available funds for project lending. Assuming a leveraging factor ranging from 2:1 to 3:1, States could experience as much as a 30 percent reduction in project funding initially as a result of the grant set aside requirement. Over time this reduction will increase exponentially."

CWA FUNDING FORMULA

The revisions to the Clean Water Act SRF distribution formula included in the Water Infrastructure Financing Act are flawed in two important ways. First, the formula places unfair burdens on three States-Iowa, Michigan, and West Virginia-to the benefit of the others. To illustrate, if the Majority formula proposal were adopted, Michigan would see its allocation over 5 years cut by more than half, or over $166 million. Iowa and West Virginia would also see substantial cuts over the same 5-year period. All together, these three States would see $215 million less over the life of the formula. The majority of States would see only very modest gains in allocations over 5 years; Florida, a State with burgeoning water infrastructure funding needs, would see barely an increase of $5 million over 5 years. More damaging than the inequitable distribution of losses under the formula in the Water Infrastructure Financing Act, is the formula's lack of a period of time to transition from a States' current allocation to the proposed allocation. The immediacy of the adoption of what is in some cases major change in a States' allocation using the formula in the Water Infrastructure Financing Act is likely to compromise the ability of the water authorities in those States to carry out their mission.

In contrast, the substitute amendment offered by Senator Jeffords at the mark-up on June 23, 2004 included a revised formula that would spread losses more thinly across States and allow time for the losses to take effect. Using a "transition period" over the 5-year lifespan of the formula, States that experience losses in water infrastructure funding are protected from significant cuts in the first year, and are allowed to absorb those cuts over time.

PROJECT AUTHORIZATIONS

Finally, the bill includes a project authorization for the Southeast Colorado Water Activity Enterprise at a cost of $85 million with no explanation for its selection for earmarking in the bill in lieu of many other similar projects. The report accompanying the reported bill includes no explanation as to why this project was selected as the nation's highest priority for water projects in the Safe Drinking Water Act program. In addition, the substitute amendment offered by Senator Jeffords included project authorizations for multiple water infrastructure projects. This amendment failed by a vote of 10–9 with Senators Jeffords, Baucus, Reid, Graham, Lieberman, Boxer, Wyden, Carper, and Clinton voting for the amendment and Senators Inhofe, Warner, Bond, Voinovich, Crapo, Chafee, Cornyn, Murkowski, Thomas, and Allard voting against the amendment.

The projects which failed to receive support in this amendment and therefore, are not authorized in this bill, include:

Memphis Metropolitan Area Groundwater Study, Arkansas, Tennessee;
Old Nogales Highway, Colonia, Arizona;
Big Creek Watershed Restoration through Stormwater Control, Georgia;
White River Environmental Restoration through CSO Replacement, Indiana;
Bastrop Morehouse Parish Water Supply, Louisiana;
Fall River and New Bedford Environmental Infrastructure Project, Massachusetts;
Statewide Combined Sewer Overflow Upgrades, Michigan;
Northeastern Minnesota water infrastructure, Minnesota;
DeSoto County Environmental Infrastructure, Mississippi;
Lower Platte River Drinking Water, Nebraska;
Central New Mexico Environmental Infrastructure, New Mexico;
Parshall Drinking Water Supply, North Dakota;
Southeastern Pennsylvania Water Infrastructure, Pennsylvania;
Lake Marion and Lake Moultrie drinking water and wastewater collection, South Carolina;
Cheyenne River Sioux Tribe Water System, South Dakota;
Colonias environmental infrastructure, Texas;
Park City Water infrastructure, Utah;
Chittenden County Storm Water Improvement, Chittenden County, Vermont;
Town of Waitsfield—Wastewater Treatment Facilities/Water relocation;
Town of Colchester Airport Parkway;
Wastewater Treatment Plant, South Burlington, Vermont;

The following California Affordable Quantity and Quality Water Act (CAL-AQQWA) Feasibility Studies:

A conjunctive use project, in cooperation with the Calaveras County Water District;
A water reclamation project, in cooperation with the city of Carson;
A water reclamation project, in cooperation with the Coastside County Water District;
A water supply project at Pacheco Creek, Los Viboras Creek, and Dos Picachos Creek, in cooperation with the San Benito County Water District;
A wetland restoration project, in cooperation with the city of San Diego;
A sediment management project at the Twitchell Reservoir, in cooperation with the Santa Maria Valley Water Conservation District;
A groundwater assessment project at the North River, in cooperation with the Tia Juana Valley County Water District;
Regional Seawater Desalination Program-San Diego County Water Authority;
Mission Springs Water District Water and Water Infrastructure-Desert Hot Springs;

Eastern Santa Clara River Subbasin (Perchlorate) Remediation Initiative-Castaic Lake Water Agency;
Bay Area Regional Desalination Project;
Calexico New River Public Health Protection Project;
South Montebello Water Infrastructure Improvement-Montebello;
Big Bear Lake Environmental Restoration project, San Bernardino Mountains;
Recycled Water Transmission Pipelines/pipeline construction, Eastern Municipal Water district;
Raymond Basin Groundwater Restoration Project-Raymond Basin Management Board;
Groundwater Recovery Enhancement and Treatment (GREAT) Program, city of Oxnard;
Beach Septic System Improvements, Los Angeles County;
San Diego Region Three Reservoir Intertie Project, San Diego County;
Port of Stockton, Port of Stockton (Rough and Ready Island);
Amador Regional Wastewater Collection and Treatment project, Amador Water Agency;
Canal Point Wastewater System, city of Pahokee, Florida;
City of Marathon Wastewater Improvement, city of Marathon, Florida;
Cypress Creek Restoration, Florida;
Key West Stormwater Improvements, Florida;
Lake Region Water Treatment Plan, Florida;
Lower West Coast Regional Irrigation Distribution System, Florida;
Miami Dade NW Wellfield-UV Disinfection of Raw Water, Florida;
Tri-County Biosolids Pelletization Facility, Florida;
East-Central Florida Integrated Water Resources Project, Florida;
Arkansas Valley Conduit, Colorado;
Southeast Colorado publicly owned water related environmental infrastructure, Colorado;
Anacostia River Ecosystem Restoration and Combined Sewer Overflow, Washington, D.C.;
Baltimore Metropolitan/Gwynns Falls project, Maryland;
St. Louis Environmental Infrastructure, Missouri;
Lake Tahoe Restoration, Nevada;
Henderson Watershed Assistance, Nevada;
Ohio Environmental Infrastructure Program, Ohio;
Rural Washington wastewater treatment and water supply, Washington;
Milwaukee Metropolitan Sewer District, Wisconsin; and
Wind River Irrigation Project, Wyoming.

ADDITIONAL VIEWS OF SENATOR JEFFORDS

July 11, 2004

JAMES INHOFE
Chairman, Senate Environment and Public Works Committee
Washington, DC

JAMES JEFFORDS
Ranking Member, Senate Environment and Public Works Committee
Washington, DC

MICHAEL CRAPO
Chairman, Subcommittee on Fisheries, Wildlife and Water
Senate Environment and Public Works Committee
Washington, DC

DEAR SENATORS INHOFE, JEFFORDS AND CRAPO:

I write to you today to express our concerns regarding S. 2550, the Water Infrastructure Financing Act. I believe that the changes to the Clean Water Act State Revolving Fund allocation formula proposed in this bill would continue the tremendous funding disparity in clean water funds that leaves many States, including my own, with insufficient resources to even come close to meeting their water infrastructure needs. That is wrong and it has to change. Let me tell you why this bill does not address the problem.

The proposed formula in S. 2550 is not a true needs-based allocation. Instead, the bill uses needs as a target for future allocations, tying consideration of need to future appropriations levels for the entire fund. To shift from the current allocation to the target allocation under the needs survey, the appropriation level of the fund must reach $3.15 billion. That appropriation level, however, has only averaged $1.35 billion a year, which is a far cry from the trigger. Consequently, under the proposed formula, there is a real possibility that States, like my home State of Arizona, will never receive their fair share of the funds authorized and appropriated for the State Revolving Fund.

In those years that we do not appropriate $3.15 billion, which I predict will be every year, the bill's transition formula would apply. The transition formula protects small states—which, under this formula, grow first—and permits large States to keep their current large allocation despite lack of need. These limits on growth and loss are nothing more than a recipe for choosing winners and losers. In effect, the Committee is asking States with exploding populations and growing needs, like my own, to subsidize the water infrastructure in these other States and pay more for the same infrastructure within their own States. This is not sound Federal policy. For those States that would receive less funding under a needs-based formula, the burden should be on them to explain why their States should receive more than they need while other States receive dramatically less.

I have consistently advocated a formula that is based on need as documented in the EPA Clean Water Act Watershed Needs Survey. In August 2001, I offered an amendment to the VA-HUD appropriations bill that would have changed the allocation formula to a needs-based formula with a 1-percent floor. I withdrew the amendment, but only after securing a commitment from this Committee and a Senate Resolution, to work together to fix this problem and report out a needs-based allocation formula. I have worked closely with you and your Committee since then, including testifying on this issue. I had high hopes that we would make progress this year to get a bill that was fair and equitable for all of the States. Thus, I was surprised and disappointed to hear that you are moving forward with S. 2550, the Water Infrastructure Financing Act.

Moving to a needs-based formula would eliminate unfunded mandates in a manner that is fair and equitable. There is a precedent here in the Safe Drinking Water Act, which allocations funds on the basis of drinking water need. In the time since the markup, you once again indicated your willingness and pledged your support to work with us to address this issue. I am ready to work with you and look forward to getting this issue resolved this time.

Sincerely,

JON KYL
United States Senator

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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:

* * * * * * *

[33 U.S.C. 1251 ET SEQ.—JUN. 30, 1948]

FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

SEC. 220. PILOT PROGRAM FOR ALTERNATIVE WATER SOURCE PROJECTS.

(a) * * *

* * * * * * *

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section [a total of $75,000,000 for fiscal years 2002 through 2004] *$25,000,000 for each of fiscal years 2005 through 2007*. Such sums shall remain available until expended.

* * * * * * *

[SEC. 221. SEWER OVERFLOW CONTROL GRANTS.]

SEC. 221. WET WEATHER GRANTS.

(a) IN GENERAL.—In any fiscal year in which the Administrator has available for obligation at least $1,350,000,000 for the purposes of section 601—

(1) the Administrator may make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of treatment works to intercept, transport, control, or treat municipal combined sewer overflows [and sanitary sewer overflows] *, sanitary sewer overflows, and stormwater runoff*; and

(2) subject to subsection (g), the Administrator may make a direct grant to a municipality or municipal entity for the purposes described in paragraph (1).

(b) PRIORITIZATION.—In selecting from among municipalities applying for grants under subsection (a), a State or the Administrator shall give priority to an applicant that—

(1) is a municipality that is a financially distressed community under subsection (c);

(2) has implemented or is complying with an implementation schedule for the nine minimum controls specified in the CSO control policy referred to in section 402(q)(1) and has begun implementing a long-term municipal combined sewer overflow control plan [or a separate sanitary sewer overflow control plan];

(3) is a municipality that is subject to the Phase I or Phase II stormwater regulations;

[(3)] *(4)* is requesting a grant for a project that is on a State's intended use plan pursuant to section 606(c); or

[(4)] *(5)* is an Alaska Native Village.

(c) FINANCIALLY DISTRESSED COMMUNITY.—

(1) DEFINITION.—In subsection (b), the term "financially distressed community" means a community that meets affordability criteria established by the State in which the community is located, if such criteria are developed after public review and comment.

(2) CONSIDERATION OF IMPACT ON WATER AND SEWER RATES.—In determining if a community is a distressed community for the purposes of subsection (b), the State shall consider, among other factors, the extent to which the rate of growth of a community's tax base has been historically slow such that implementing a plan described in subsection (b)(2) would result in a significant increase in any water or sewer rate charged by the community's publicly owned wastewater treatment facility.

(3) INFORMATION TO ASSIST STATES.—The Administrator may publish information to assist States in establishing affordability criteria under paragraph (1).

(d) COST-SHARING.—The Federal share of the cost of activities carried out using amounts from a grant made under subsection (a) shall be not less than 55 percent of the cost. The non-Federal share of the cost may include, in any amount, public and private funds and in-kind services, and may include, notwithstanding section [603(h)] *603(i)*, financial assistance, including loans, from a State water pollution control revolving fund.

(e) ADMINISTRATIVE REPORTING REQUIREMENTS.—If a project receives grant assistance under subsection (a) and loan assistance from a State water pollution control revolving fund and the loan assistance is for 15 percent or more of the cost of the project, the project may be administered in accordance with State water pollution control revolving fund administrative reporting requirements for the purposes of streamlining such requirements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this [section $750,000,000 for each of fiscal years 2002 and 2003. Such sums shall remain available until expended.] *section $250,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.*

(g) ALLOCATION OF FUNDS.—

(1) FISCAL YEAR 2002.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2002 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

(2) FISCAL YEAR 2003.—Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2003 as follows:

(A) Not to exceed $250,000,000 for making grants to municipalities and municipal entities under subsection (a)(2), in accordance with the criteria set forth in subsection (b).

(B) All remaining amounts for making grants to States under subsection (a)(1), in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls [and sanitary sewer overflow controls] *, sanitary sewer overflow controls, and stormwater runoff controls* identified in the most recent survey conducted pursuant to section 516(b)(1).

(h) ADMINISTRATIVE EXPENSES.—Of the amounts appropriated to carry out this section for each fiscal year—

(1) the Administrator may retain an amount not to exceed 1 percent for the reasonable and necessary costs of administering this section; and

(2) the Administrator, or a State, may retain an amount not to exceed 4 percent of any grant made to a municipality or municipal entity under subsection (a), for the reasonable and necessary costs of administering the grant.

(i) REPORTS.—Not later than December 31, 2003, and periodically thereafter, the Administrator shall transmit to Congress a report containing recommended funding levels for grants under this section. The recommended funding levels shall be sufficient to ensure the continued expeditious implementation of municipal combined sewer overflow [and sanitary sewer overflow controls] *, sanitary sewer overflow, and stormwater runoff* nationwide.

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SEC. 320. NATIONAL ESTUARY PROGRAM.

* * * * * * *

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed [$35,000,000 for each of fiscal years 2001 through 2005] *$35,000,000 for each of fiscal years 2005 through 2010* for—

(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

(2) making grants under subsection (g); and

(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).

* * * * * * *

REPORTS TO CONGRESS

SEC. 516. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (1) a detailed estimate

of the cost of carrying out the provisions of this Act; (2) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (3) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (4) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this Act or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each [odd-numbered] *fourth* year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

* * * * * * *

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) REQUIREMENTS FOR OBLIGATION OF GRANT FUNDS.—Before a State may receive a capitalization grant with funds made available under this title and section 205(m) of this Act, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) ADMINISTRATOR.—Each State water pollution control revolving fund shall be administered by an instrumentality of the State with such powers and limitations as may be required to operate such fund in accordance with the requirements and objectives of this Act.

[(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.]

(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—

(1) REQUIREMENTS.—A project shall be eligible to receive funding, in whole or in part, from a State water pollution control revolving fund under this section only if the project meets the requirements of section 513.

(2) USE OF FUNDS.—Funds in each State water pollution control revolving fund shall be used only for—

(A) providing financial assistance to a municipality, intermunicipal, interstate, or State agency, or private utility that principally treats municipal wastewater or domestic sewage, for construction (including costs for planning, design, associated preconstruction, and necessary activities for siting the facility and related elements) of treatment works (as defined in section 212);

(B) implementation of a management program established under section 319;

(C) development and implementation of a conservation and management plan under section 320;

(D) water conservation projects or activities the primary purpose of which is the protection, preservation, or enhancement of water quality, including through—

(i) piping or lining of an irrigation canal;

(ii) recovery or recycling of wastewater or runoff from irrigation;

(iii) irrigation scheduling;

(iv) measurement or metering of water use; or

(v) improvement of on-field irrigation efficiency;

(E) providing financial assistance to a municipality or an intermunicipal, interstate, or State agency for reuse, reclamation, or recycling projects the primary purpose of which is the protection, preservation, or enhancement of water quality;

(F) providing financial assistance to a municipality or an intermunicipal, interstate, or State agency for projects to increase the security of wastewater treatment works (excluding any expenditure for operations or maintenance); or

(G) providing financial assistance to a municipality or an intermunicipal, interstate, or State agency for measures to control municipal stormwater, the primary purpose of which is the preservation, protection, or enhancement of water quality.

(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

(1) to make loans, on the condition that—

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed 20 years;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized not later than 20 years after project completion;

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and

(D) the fund will be credited with all payments of principal and interest on all loans;

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

(3) to guarantee, or purchase insurance for, local obligations where such action would improve credit market access or reduce interest rates;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of such bonds will be deposited in the fund;

(5) to provide loan guarantees for similar revolving funds established by municipalities or intermunicipal agencies;

(6) to earn interest on fund accounts; [and]

(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed [4 percent] *6 percent* of all grant awards to such fund under this title[.] *; and*

(8) to carry out a project under paragraph (2) or (3) of section 601(a), which may be—

(A) operated by a municipal, intermunicipal, or interstate entity, State, public or private utility, corporation, partnership, association, or nonprofit agency; and

(B) used to make loans that will be fully amortized not later than 30 years after the date of the completion of the project.

(e) TYPES OF ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

(1) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term 'disadvantaged community' means the service area, or portion of a service area, of a treatment works that meets affordability criteria established after public review and comment by the State in which the treatment works is located.

(2) LOAN SUBSIDY.—Notwithstanding any other provision of this section, in a case in which the State makes a loan from the water pollution control revolving loan fund in accordance with subsection (c) to a disadvantaged community or a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization, including the forgiveness of the principal of the loan.

(3) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by the State pursuant to this subsection may not exceed 30 percent of the amount of the capitalization grant received by the State for the fiscal year.

(4) EXTENDED TERM.—A State may provide an extended term for a loan if the extended term—

(A) terminates not later than the date that is 30 years after the date of completion of the project; and

(B) does not exceed the expected design life of the project.

(5) INFORMATION.—The Administrator may publish information to assist States in establishing affordability criteria described in paragraph (1).

[(e)] *(f)* LIMITATION TO PREVENT DOUBLE BENEFITS.—If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) of this Act for non-federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

[(f)] *(g)* CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from its water pollution con-

trol revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 303(e), 319, and 320 of this Act.

[(g)**]** ***[****(h)* PRIORITY LIST REQUIREMENT.—The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.**]**

(h) PRIORITY SYSTEM REQUIREMENT.—

(1) DEFINITIONS.—In this subsection:

(A) RESTRUCTURING.—The term 'restructuring' means—

(i) the consolidation of management functions or ownership with another facility; or

(ii) the formation of cooperative partnerships.

(B) TRADITIONAL WASTEWATER APPROACH.—The term 'traditional wastewater approach' means a managed system used to collect and treat wastewater from an entire service area consisting of—

(i) collection sewers;

(ii) a centralized treatment plant using biological, physical, or chemical treatment processes; and

(iii) a direct point source discharge to surface water.

(2) PRIORITY SYSTEM.—A State shall establish a system for providing financial assistance from the water pollution control revolving fund of the State under which the State—

(A) gives more weight to an application for assistance by a treatment works if the application includes such other information as the State determines to be appropriate and—

(i) an inventory of assets, including a description of the condition of those assets;

(ii) a schedule for replacement of assets;

(iii) a financing plan indicating sources of revenue from rate payers, grants, bonds, other loans, and other sources;

(iv) a review of options for restructuring the treatment works; or

(v) a review of options for approaches other than a traditional wastewater approach that may include actions or projects that treat or minimize sewage or urban stormwater discharges using—

(I) decentralized or distributed stormwater controls;

(II) decentralized wastewater treatment;

(III) low impact development technologies;

(IV) stream buffers;

(V) wetland restoration; or

(VI) actions to minimize the amount of and direct connections to impervious surfaces;

(B) takes into consideration appropriate chemical, physical, and biological data that the State considers reasonably available and of sufficient quality;

(C) provides for public notice and opportunity to comment on establishment of the system and the summary under subparagraph (D);

(D) publishes not less than biennially in summary form a description of projects in the State that are eligible for assistance under this title that indicates—

(i) the priority assigned to each project under the priority system of the State; and

(ii) the funding schedule for each project, to that extent the such information is available; and

(E) ensures that projects undertaken with assistance under this title are designed to achieve, in the estimation of the State, the optimum water quality management, consistent with the public health and water quality goals and requirements of this title.

[(h)] *(i)* ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS.—A State water pollution control revolving fund may provide assistance (other than under subsection (d)(1) of this section) to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a treatment works project for which such municipality or agency is receiving assistance from the Administrator under any other authority only if such assistance is necessary to allow such project to proceed.

(j) TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Governor of a State may—

(A)(i) reserve not more than 33 percent of a capitalization grant made under this title; and

(ii) add the funds reserved to any funds provided to the State under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12); and

(B)(i) reserve for any year an amount that does not exceed the amount that may be reserved under subparagraph (A) for that year from capitalization grants made under section 1452 of that Act (42 U.S.C. 300j–12); and

(ii) add the reserved funds to any funds provided to the State under this title.

(2) STATE MATCH.—Funds reserved under this subsection shall not be considered to be a State contribution for a capitalization grant required under this title or section 1452(b) of the Safe Drinking Water Act (42 U.S.C. 300j–12(b)).

(k) SET-ASIDE.—

(1) $3,000,000,000 OR LESS MADE AVAILABLE.—

(A) IN GENERAL.—In the case of a fiscal year for which appropriations for State revolving loan funds do not exceed $3,000,000,000, a State shall set aside 10 percent of the capitalization grant of the State under section 601(a) to provide grants to eligible users described in subsection (c) in the amount of not more than 55 percent of the total cost of a project for which a grant is made.

(B) WAIVER.—A State may waive the requirement of subparagraph (A) if the average time for processing loan

applications during the preceding 12 months did not exceed 90 days.

(2) MORE THAN $3,000,000,000 MADE AVAILABLE.—In the case of a fiscal year for which appropriations for State revolving loan funds exceed $3,000,000,000, a State shall set aside not more than 10 nor less than 5 percent of the State revolving loan fund of the State.

* * * * * * *

SEC. 604. ALLOTMENT OF FUNDS.

[(a) FORMULA.—Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and 1990 shall be allotted by the Administrator in accordance with section 205(c) of this Act.]

(a) DEFINITIONS.—In this subsection:

(1) BASE FORMULA.—The term 'base formula' means the formula for the allotment of funds made available to carry out this section for a fiscal year to States in accordance with section 205(c)(3).

(2) NEEDS SURVEY.—The term 'needs survey' means a needs survey conducted under section 516(2).

(3) NEEDS SURVEY PERCENTAGE.—The term 'needs survey percentage', with respect to a State, means the percentage applicable to the State under a formula for the allotment of funds made available to carry out this section for a fiscal year to States in amounts determined by the Administrator based on the ratio that—

(A) the needs of a State described in categories I through VII of the most recent needs survey; bears to

(B) the needs of all States described in categories I through VII of the most recent needs survey.

(4) NEXT NEEDS SURVEY.—The term 'next needs survey' means the first needs survey that is completed after the 2000 needs survey.

(5) STATE.—The term 'State' means a State, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—Funds made available to carry out this section for a fiscal year shall be allocated by the Administrator in accordance with this subsection.

(2) INDIAN TRIBES.—Of the total amount of funds available, 1.5 percent shall be allocated to Indian tribes (within the meaning of section 518(c)).

(3) CERTAIN TERRITORIES AND FREELY ASSOCIATED STATES.—Of the total amount of funds made available, 0.25 percent shall be allocated to Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau to be allocated among those territories and freely associated states, as determined by the Administrator.

(4) STATES.—

(A) TARGET ALLOCATION.—Each State shall have a target allocation that—

(i) in the case of a State for which the needs survey percentage is less than 1.0 percent, shall be 1.0 percent; and

(ii) in the case of any other State, shall be the needs survey percentage.

(B) LIMITATION ON GROWTH.—

(i) APPLICABILITY.—This subparagraph applies with respect to any fiscal year for which the amount of funds made available to carry out this section is $3,150,000,000 or less.

(ii) STATES WITH A NEEDS SURVEY PERCENTAGE OF 1.0 PERCENT OR LESS.—In the case of a State for which the needs survey percentage is 1.0 percent or less, the growth in allocation in dollar terms relative to the base formula shall be limited to—

(I) 12 percent for fiscal year 2005;

(II) 16 percent for fiscal year 2006;

(III) 20 percent for fiscal year 2007;

(IV) 24 percent for fiscal year 2008; and

(V) 28 percent for fiscal year 2009 and each fiscal year thereafter.

(iii) STATES WITH A NEEDS SURVEY PERCENTAGE OF GREATER THAN 1.0 PERCENT.—In the case of a State for which the needs survey percentage is greater than 1.0 percent, the growth in allocation in dollar terms relative to the base formula shall be limited to 0.0 percent (before an allocation, if any, is made under subparagraph (D)).

(C) LIMITATION ON LOSS.—

(i) STATES WITH A NEEDS SURVEY PERCENTAGE OF 1.0 PERCENT OR LESS.—A dollar amount that is not less than the dollar amount under the base formula shall be allocated to States described in subparagraph (A)(i).

(ii) STATES FOR WHICH THE NEEDS SURVEY PERCENTAGE IS GREATER THAN 1.0 PERCENT.—A dollar amount that is equal to the dollar amount under the base formula shall be allocated to States described in subparagraph (A)(ii) (before an allocation, if any, is made under subparagraph (D)) that—

(I) in the most recent needs survey, reported higher needs in both categories V and VII than the State reported in the previous needs survey;

(II) grew in population by more than 10 percent between the 1990 decenniel census and the 2000 decenniel census; or

(III) has a population equal to 4 percent or more of the total population of the United States, as reported in the 2000 decenniel census.

(D) UNALLOCATED BALANCE.—

(i) LESS THAN $1,380,000,000 MADE AVAILABLE.—For a fiscal year for which less than $1,380,000,000 is made available to carry out this section, the unallocated balance of available funds shall be allocated in equal amounts to all States that, in the most

recent needs survey, report higher total needs both in absolute dollar terms and as a percentage of the total United States needs.

(ii) $1,380,000,000 OR MORE MADE AVAILABLE.—For a fiscal year for which $1,380,000,000 or more is made available to carry out this section, the unallocated balance of available funds shall be allocated in equal amounts to all States that—

(I) are described in clause (i); or

(II) are described in subparagraph (C).

[(b)] *(c)* RESERVATION OF FUNDS FOR PLANNING.—Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 205(j) and 303(e) of this Act.

[(c)] *(d)* ALLOTMENT PERIOD.—

(1) PERIOD OF AVAILABILITY FOR GRANT AWARD.—Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

(2) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any allotment not obligated by the State by the last day of the 2-year period of availability established by paragraph (1) shall be immediately reallotted by the Administrator on the basis of the same ratio as is applicable to sums allotted under title II of this Act for the second fiscal year of such 2-year period. None of the funds reallotted by the Administrator shall be reallotted to any State which has not obligated all sums allotted to such State in the first fiscal year of such 2-year period.

(f) RESERVATION OF FUNDS FOR PLANNING.—A State shall reserve to carry out planning under sections 205(j) and 303(e) for each fiscal year the greater of—

(1) 2 percent of the amount allocated to the State under this section for the fiscal year; or

(2) $100,000.

* * * * * * *

[SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

[There is authorized to be appropriated to carry out the purposes of this title the following sums:

[(1) $1,200,000,000 per fiscal year for each of fiscal year 1989 and 1990;

[(2) $2,400,000,000 for fiscal year 1991;

[(3) $1,800,000,000 for fiscal year 1992;

[(4) $1,200,000,000 for fiscal year 1993; and

[(5) $600,000,000 for fiscal year 1994.]

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

(1) $3,200,000,000 for each of fiscal years 2005 and 2006;

(2) $3,600,000,000 for fiscal year 2007;

(3) $4,000,000,000 for fiscal year 2008; and

(4) $6,000,000,000 for fiscal year 2009.

(b) AVAILABILITY.—Amounts made available under this section shall remain available until expended.

(c) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under subsection (a) to carry out this title for a fiscal year, the Administrator may reserve not more than $1,000,000 per year to pay the costs of conducting needs surveys under section 516(2).

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TITLE VII—MISCELLANEOUS

SEC. 701. SEWAGE CONTROL TECHNOLOGY GRANT PROGRAM.

(a) DEFINITION OF ELIGIBLE FACILITY.—In this section, the term 'eligible facility' means a municipal wastewater treatment plant that—

(1) as of the date of enactment of this title, has a permitted design capacity to treat an annual average of at least 500,000 gallons of wastewater per day; and

(2) is located within the Chesapeake Bay watershed in any of the States of Delaware, Maryland, New York, Pennsylvania, Virginia, or West Virginia or in the District of Columbia.

(b) GRANT PROGRAM.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this title, the Administrator shall establish a program within the Environmental Protection Agency to provide grants to States and municipalities to upgrade eligible facilities with nutrient removal technologies.

(2) PRIORITY.—In providing a grant under paragraph (1), the Administrator shall—

(A) consult with the Chesapeake Bay Program Office;

(B) give priority to eligible facilities at which nutrient removal upgrades would—

(i) produce the greatest nutrient load reductions at points of discharge; or

(ii) result in the greatest environmental benefits to local bodies of water surrounding, and the main stem of, the Chesapeake Bay; and

(C) take into consideration the geographic distribution of the grants.

(3) APPLICATION.—

(A) IN GENERAL.—On receipt of an application from a State or municipality for a grant under this section, if the Administrator approves the request, the Administrator shall transfer to the State or municipality the amount of assistance requested.

(B) FORM.—An application submitted by a State or municipality under subparagraph (A) shall be in such form and shall include such information as the Administrator may prescribe.

(4) USE OF FUNDS.—A State or municipality that receives a grant under this section shall use the grant to upgrade eligible facilities with nutrient removal technologies that are de-

signed to reduce total nitrogen in discharged wastewater to an average annual concentration of 4 milligrams per liter.

(5) COST SHARING.—

(A) FEDERAL SHARE.—The Federal share of the cost of upgrading any eligible facility described in paragraph (1) using funds provided under this section shall not exceed 55 percent.

(B) NON-FEDERAL SHARE.—The non-Federal share of the costs of upgrading any eligible facility described in paragraph (1) using funds provided under this section may be provided in the form of funds made available to a State or municipality under—

(i) any provision of this Act other than this section (including funds made available from a State revolving fund established under title VI); or

(ii) any other Federal or State law.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $100,000,000 for each of fiscal years 2005 through 2009, to remain available until expended.

(2) ADMINISTRATIVE COSTS.—The Administrator may use not to exceed 4 percent of any amount made available under paragraph (1) for a fiscal year to pay administrative costs incurred in carrying out this section.

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[42 U.S.C. 300F—JUL. 1, 1944]

SAFE DRINKING WATER ACT

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SHORT TITLE

SEC. 1400. This title may be cited as the "Safe Drinking Water Act".

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PART A—DEFINITIONS

DEFINITIONS

SEC. 1401. * * *

(14) The term "Indian Tribe" means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area. For purposes of section [1452,] *1452 and part G,* the term includes any Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c))).

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SEC. 1420. * * *

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(g) ENVIRONMENTAL FINANCE CENTERS.—

(1) IN GENERAL.—The Administrator shall provide initial funding for one or more university-based environmental finance centers for activities that provide technical assistance to State and local officials in developing the capacity of public water systems. Any such funds shall be used only for activities that are directly related to this title.

(2) NATIONAL CAPACITY DEVELOPMENT CLEARINGHOUSE.—The Administrator shall establish a national public water system capacity development clearinghouse to receive and disseminate information with respect to developing, improving, and maintaining financial and managerial capacity at public water systems. The Administrator shall ensure that the clearinghouse does not duplicate other federally supported clearinghouse activities.

(3) CAPACITY DEVELOPMENT TECHNIQUES.—The Administrator may request an environmental finance center funded under paragraph (1) to develop and test managerial, financial, and institutional techniques for capacity development. The techniques may include capacity assessment methodologies, manual and computer based public water system rate models and capital planning models, public water system consolidation procedures, and regionalization models.

[(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $1,500,000 for each of the fiscal years 1997 through 2003.**]**

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,000,000 for each of fiscal years 2005 through 2009.

(5) LIMITATION.—No portion of any funds made available under this subsection may be used for lobbying expenses.

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RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 1442. * * *

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(e) TECHNICAL ASSISTANCE.—**[**The Administrator may provide**]**

(1) IN GENERAL.—The Administrator may provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with applicable national primary drinking water regulations. Such assistance may include circuit-rider and multi-State regional technical assistance programs, training, and preliminary engineering evaluations. The Administrator shall ensure that technical assistance pursuant to this subsection is available in each State. Each nonprofit organization receiving assistance under this subsection shall consult with the State in which the assistance is to be expended or otherwise made available before using assistance to undertake activities to carry out this subsection. There are authorized to be appropriated to the Administrator to be used for such technical assistance $15,000,000 for each

of the fiscal years 1997 through 2003. No portion of any State loan fund established under section 1452 (relating to State loan funds) and no portion of any funds made available under this subsection may be used for lobbying expenses. Of the total amount appropriated under this subsection, 3 percent shall be used for technical assistance to public water systems owned or operated by Indian Tribes.

(2) SMALL SYSTEM REVOLVING LOAN FUND.—

(A) IN GENERAL.—In addition to amounts provided under this section, the Administrator may provide grants to qualified private, nonprofit entities to capitalize revolving funds to provide financing to eligible entities described in subparagraph (B) for—

(i) predevelopment costs (including costs for planning, design, associated preconstruction, and necessary activities for siting the facility and related elements) associated with proposed water projects or with existing water systems; and

(ii) short-term costs incurred for replacement equipment, small-scale extension services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water systems.

(B) ELIGIBLE ENTITIES.—To be eligible for assistance under this paragraph, an entity shall be a small water system (as described in section 1412(b)(4)(E)(ii)).

(C) MAXIMUM AMOUNT OF LOANS.—The amount of financing made to an eligible entity under this paragraph shall not exceed—

(i) $100,000 for costs described in subparagraph (A)(i); and

(ii) $100,000 for costs described in subparagraph (A)(ii).

(D) TERM.—The term of a loan made to an eligible entity under this paragraph shall not exceed 10 years.

(E) ANNUAL REPORT.—For each fiscal year, a qualified private, nonprofit entity that receives a grant under subparagraph (A) shall submit to the Administrator a report that—

(i) describes the activities of the qualified private, nonprofit entity under this paragraph for the fiscal year; and

(ii) specifies—

(I) the number of communities served;

(II) the sizes of those communities; and

(III) the type of financing provided by the qualified private, nonprofit entity.

(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2005 through 2009.

* * * * * * *

[(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section

$599,000,000 for the fiscal year 1994 and $1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.]

(m) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

(A) $1,500,000,000 for fiscal year 2005;

(B) $2,000,000,000 for each of fiscal years 2006 and 2007;

(C) $3,500,000,000 for fiscal year 2008; and

(D) $6,000,000,000 for fiscal year 2009.

(2) AVAILABILITY.—Amounts made available under this subsection shall remain available until expended.

(3) RESERVATION FOR NEEDS SURVEYS.—Of the amount made available under paragraph (1) to carry out this section for a fiscal year, the Administrator may reserve not more than $1,000,000 for each fiscal year to pay the costs of conducting needs surveys under subsection (h).

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GENERAL PROVISIONS

SEC. 1450. * * *

* * * * * * *

[(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a–276a(5)). The Secretary of Labor]

(e) LABOR STANDARDS.—

(1) IN GENERAL.—The Administrator shall take such action as is necessary to ensure that all laborers and mechanics employed by contractors and subcontractors on construction projects financed, in whole or in part, by a grant, loan, loan guarantee, refinancing, or any other form of assistance provided under this title (including assistance provided from the State drinking water revolving fund under section 1452) are paid wages at rates that are not less than the rates prevailing for the same type of work for similar construction in the immediate locality, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a et seq.).

(2) AUTHORITY AND FUNCTIONS.—The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

* * * * * * *

STATE REVOLVING LOAN FUNDS

SEC. 1452. (a) GENERAL AUTHORITY.—

* * * * * * *

(2) USE OF FUNDS.—Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures [(not] *(including expenditures for planning, design, and associated preconstruction and for recovery for siting of the facility and related elements but not* including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. The funds may also be used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III). The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems *or to replace or rehabilitate aging collection, treatment, storage (including reservoirs), or distribution facilities of public water systems or provide for capital projects to upgrade the security of public water systems*.

* * * * * * *

(b) INTENDED USE PLANS.—

(1) IN GENERAL.—After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) CONTENTS.—An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(3) USE OF FUNDS.—

[(A) IN GENERAL.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

[(i) address the most serious risk to human health;

[(ii) are necessary to ensure compliance with the requirements of this title (including requirements for filtration); and

[(iii) assist systems most in need on a per household basis according to State affordability criteria.]

(A) DEFINITIONS.—In this paragraph:

(i) RESTRUCTURING.—The term 'restructuring' means changes in operations (including ownership, accounting, rates, maintenance, consolidation, and alternative water supply).

(ii) TRADITIONAL APPROACH.—The term 'traditional approach' means a managed system used to treat and distribute drinking water to an entire service area consisting of a centralized water system using biological, physical, or chemical treatment processes.

(B) PRIORITY SYSTEM.—An intended use plan shall provide, to the maximum extent practicable, that—

(i) priority for the use of funds be given to projects—

(I) that address the most serious risk to human health;

(II) that are necessary to ensure compliance with the requirements of this title (including requirements for filtration); and

(III) that assist systems most in need on a per-household basis according to State affordability criteria; and

(ii) the State shall give more weight to an application for assistance by a community water system if the application includes such other information as the State determines to be necessary and—

(I) an inventory of assets, including a description of the condition of those assets;

(II) a schedule for replacement of assets;

(III) a financing plan indicating sources of revenue from rate payers, grants, bonds, other loans, and other sources;

(IV) a review of options for restructuring the public water system; or

(V) a review of options for approaches other than a traditional approach.

[(B)] *(C)* LIST OF PROJECTS.—Each State shall, after notice and opportunity for public comment, publish and [periodically] *at least biennially* update a list of projects in the State that are eligible for assistance under this sec-

tion, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

* * * * * * *

(d) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—

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(3) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term "disadvantaged community" means the service area *, or portion of a service area,* of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

* * * * * * *

(g) ADMINISTRATION OF STATE LOAN FUNDS.—

(1) COMBINED FINANCIAL ADMINISTRATION.—Notwithstanding subsection (c), a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a); and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 1413, after consultation with other appropriate State agencies (as determined by the State): Provided, That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) COST OF ADMINISTERING FUND.—Each State may annually use up to **[**4**]** *6* percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after the date of enactment of this section, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 1443(a);

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 1420(c); and

(D) for an operator certification program for purposes of meeting the requirements of section [1419, if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993.] *1419.* An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) GUIDANCE AND REGULATIONS.—The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this title and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) STATE REPORT.—Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(5) TRANSFER OF FUNDS.—

(A) IN GENERAL.—The Governor of a State may—

(i)(I) reserve not more than 33 percent of a capitalization grant made under this section; and

(II) add the funds reserved to any funds provided to the State under section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

(ii)(I) reserve for any fiscal year an amount that does not exceed the amount that may be reserved under clause (i)(I) for that year from capitalization grants made under section 601 of that Act (33 U.S.C. 1381); and

(II) add the reserved funds to any funds provided to the State under this section.

(B) STATE MATCH.—Funds reserved under this paragraph shall not be considered to be a State match of a capitalization grant required under this section or section 602(b) of the Federal Water Pollution Control Act (33 U.S.C. 1382(b)).

* * * * * * *

(k) OTHER AUTHORIZED ACTIVITIES.—

(2) LIMITATION.—For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C) *(including implementation of source water protection plans)*.

* * * * * * *

(s) SET-ASIDE.—

(1) $2,500,000,000 OR LESS MADE AVAILABLE.—

(A) IN GENERAL.—In the case of a fiscal year for which appropriations for State revolving loan funds do not exceed $2,500,000,000, a State shall set aside 10 percent of the capitalization grant of the State under subsection (a) to provide grants to projects eligible for assistance under subsection (a)(2) of not more than 55 percent of the total cost of a project for which a grant is made.

(B) WAIVER.—A State may waive the requirement of subparagraph (A) if the average time for processing loan applications during the preceding 12 months did not exceed 90 days.

(2) MORE THAN $2,500,000,000 MADE AVAILABLE.—In the case of a fiscal year for which appropriations for State revolving loan funds exceed $2,500,000,000, a State shall set aside not more than 5 nor less than 2.5 percent of the State revolving loan fund of the State.

* * * * * * *

LEAD CONTAMINATION IN SCHOOL DRINKING WATER

SEC. 1464

* * * * * * *

[(d) REMEDIAL ACTION PROGRAM.—

[(1) TESTING AND REMEDYING LEAD CONTAMINATION.—Within 9 months after the enactment of this section, each

State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

[(2) PUBLIC AVAILABILITY.—A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

[(3) COOLERS.—In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after the enactment of this subsection all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.]

(d) REMOVAL OF LEAD IN SCHOOLS.—

(1) IN GENERAL.—Not later than 270 days after the date of enactment of the Water Infrastructure Financing Act, in consultation with each State, the Administrator shall establish a program to provide grants to States to assist in paying, or to provide reimbursement for, costs incurred by local educational agencies in testing for, remediating, and informing students, parents, teachers, and employees about lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of the local educational agencies.

(2) FUNDING.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $40,000,000 for each of fiscal years 2005 through 2008.

(B) ADMINISTRATIVE EXPENSES.—The Administrator may use not more than 5 percent of amounts made available under subparagraph (A) for a fiscal year to pay administrative expenses incurred in carrying out this subsection.

[FEDERAL ASSISTANCE FOR STATE PROGRAMS REGARDING LEAD CONTAMINATION IN SCHOOL DRINKING WATER

[SEC. 1465. (a) SCHOOL DRINKING WATER PROGRAMS.—The Administrator shall make grants to States to establish and carry out State programs under section 1464 to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after the enactment of this section for such testing and remedial action.

[(b) LIMITS.—Each grant under this section shall be used by the State for testing water coolers in accordance with section 1464, for testing for lead contamination in other drinking water supplies under section 1464, or for remedial action under State programs under section 1464. Not more than 5 percent of the grant may be used for program administration.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.]

SEC. 1465. LEAD CONTAMINATION IN DRINKING WATER IN THE DISTRICT OF COLUMBIA.

(a) GRANT.—

(1) IN GENERAL.—The Administrator may provide to the District of Columbia a grant of $20,000,000 to be used to address lead contamination in the water supply of the District of Columbia.

(2) USE OF GRANT FUNDS.—Funds provided under paragraph (1) may be used for activities such as—

(A) assessment of infrastructure (which may include, on a voluntary basis, fixtures within private residences, including replacement faucet strainers);

(B) testing of water supplies throughout the water system;

(C) distribution of filters to residences with high lead levels;

(D) evaluation of chemical additives (including zinc orthophosphate) to the water supply;

(E) pipe replacement; and

(F) evaluation and improvement of communication with the general public, particularly households with water that tested above the action level for lead.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $20,000,000.

(b) STUDY BY THE NATIONAL ACADEMY OF SCIENCES.—

(1) IN GENERAL.—The Administrator shall contract with the National Academy of Sciences to conduct a 2-phase study in accordance with this subsection.

(2) PHASE I.—In phase I of the study, the National Academy of Sciences shall conduct a comprehensive evaluation of—

(A) compliance by the District of Columbia Water and Sewer Authority with regulations pertaining to lead and copper in drinking water (including meeting the public notification requirements of the regulations); and

(B) the potential causes of lead in the water supply of the District of Columbia.

(3) PHASE II.—In phase II of the study, the National Academy of Sciences shall assess, from a cross-section of cities of varying population sizes across the United States with lead service lines—

(A) the extent to which water levels in those cities have exceeded the action level for lead; and

(B) the potential causes of the exceedences (including service lines, chemical additives in the water supply, equipment upgrades, and pipes in residences).

(4) REPORT.—Not later than 1 year after the date of enactment of this paragraph, the National Academy of Sciences shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the findings made in the study.

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,000,000.

* * * * * * *

PART G—SMALL PUBLIC WATER SYSTEM ASSISTANCE[1]

SEC. 1471. DEFINITIONS.

In this part:

(1) ELIGIBLE ACTIVITY.—

(A) IN GENERAL.—The term "eligible activity" means an activity that is carried out by an eligible entity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412.

(B) INCLUSION.—The term "eligible activity" includes source water protection.

(C) EXCLUSION.—The term "eligible activity" does not include any activity to increase the population served by a public water system, except to the extent that the Administrator determines an activity to be necessary to—

(i) achieve compliance with a national primary drinking water regulation; and

(ii) provide a water supply to a population that, as of the date of enactment of this part, is not served by a safe public water system.

(2) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) a small public water system that—

(i) if located in a State, serves a community that, under affordability criteria established by the State under section 1452(d), is determined by the State to be—

(I) a disadvantaged community; or

(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State; or

(ii) if located in an area governed by an Indian Tribe, serves a community that is determined by the Administrator, under criteria published by the Administrator under section 1452(d) and in consultation with the Secretary, to be—

[1]Note: This bill, as amended by the committee, includes different provisions for Sections 1471-1474.

(I) a disadvantaged community; or

(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State; and

(B) a public water system that—

(i) would incur $3,000,000 or more in costs in complying with national primary drinking water regulations promulgated under this Act; and

(ii) is a disadvantaged community or a community may otherwise become disadvantaged as a result of carrying out an eligible activity, as determined by the State.

(3) PROGRAM.—The term "program" means the small public water system assistance program established under section 1472(a).

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services, acting through the Director of the Indian Health Service.

(5) SMALL PUBLIC WATER SYSTEM.—The term "small public water system" means a public water system (including a community water system and a noncommunity water system) that serves a population of 15,000 or fewer individuals.

SEC. 1472. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM.

(a) ESTABLISHMENT.—Not later than July 1, 2006, the Administrator shall establish within the Environmental Protection Agency a small public water system assistance program for, and provide grants to, eligible entities for use in carrying out eligible activities.

(b) PRIORITY.—

(1) IN GENERAL.—The Administrator shall provide grants to eligible entities for eligible activities that—

(A) address the most serious risks to human health from lack of compliance with the regulations specified in subparagraph (B);

(B) are necessary to ensure compliance with national primary drinking water regulations applicable to eligible entities under section 1412; and

(C) assist systems serving communities that are most in need, as calculated on the basis of median household income, under affordability criteria established by the State under section 1452(d) (or, in the case of eligible entities in an area governed by an Indian Tribe, under affordability criteria established by the Administrator, in consultation with the Secretary).

(2) MANAGEMENT COOPERATIVES.—The Administrator shall consider giving priority for grants under this section to eligible activities that are carried out by communities that form management cooperatives.

(d) TECHNICAL ASSISTANCE.—In providing grants under this section, the Administrator shall—

(1) use not less than 1.5 percent of funds made available to carry out this section to provide grants to nonprofit technical assistance organizations to be used to assist eligible entities in—

(A) assessing needs relating to eligible activities;

(B) identifying additional available sources of funding to meet the cost-sharing requirements under the program; and

(C) planning, implementing, and maintaining any eligible activities of the eligible entities that receive funding under this section;

(2) require that none of the funds provided under paragraph (1) be used to pay for lobbying expenses; and

(3) require that for each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities for which funding is provided under this section.

(e) INDIAN TRIBES.—

(1) IN GENERAL.—In providing grants under this section, the Administrator shall use not less than 3 percent of funds made available to carry out this section for each fiscal year to provide grants to eligible entities that are located in areas governed by Indian Tribes.

(2) PROGRAM PRIORITY REQUIREMENT.—

(A) LIST OF ELIGIBLE ACTIVITIES.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary, shall, for each fiscal year, identify, and, consistent with subsection (b) and considering the criteria described in subparagraph (B), list in descending order of priority, eligible activities for eligible entities located in areas governed by Indian Tribes for which funds provided from a grant under this part may be used.

(ii) COORDINATION.—

(I) IN GENERAL.—To the maximum extent practicable, the Administrator shall ensure that the preparation of the list under clause (i) is coordinated with any needs assessment conducted under section 1452(i)(4).

(II) ADDITIONAL CONSIDERATION.—Any additional financial needs of small public water systems located in areas governed by Indian Tribes that are associated with the cost of complying with a national primary drinking water regulation (including a regulation concerning arsenic) that is promulgated after the then most recent needs survey conducted under section 1452(i)(4) shall be factored into the determination of financial need for, and prioritization of, eligible activities under this section.

(B) CRITERIA.—The Administrator shall, in preparing a list under subparagraph (A), consider giving priority to any listed eligible activities that are to be carried out by communities that form management cooperatives (including management cooperatives between systems that do not have public water system connections).

(3) ALLOCATION OF GRANT FUNDING.—For each fiscal year, the Administrator, in consultation with the Secretary, shall provide grants to eligible entities located in an area governed by an Indian Tribe for the maximum number of eligible activities for which the funding allocation makes assistance available, based on the priority assigned by the Administrator to eligible activities under paragraph (2).

(4) LIMITATION ON USE OF FUNDS.—For each fiscal year, not more than 5 percent of the funds received by an eligible entity located in an area governed by an Indian Tribe under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities that are funded under this section.

(f) LIMITATION ON RECEIPT OF FUNDS.—An eligible entity may receive a grant under this section only—

(1) if the Administrator determines that use of the grant will aid compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(2)(A) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(B) in a case in which restructuring or consolidation of the facility is not practicable, if the Administrator determines that—

(i) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(ii) the eligible entity is adhering to an enforceable schedule for complying with those regulations; and

(3) if—

(A) the Administrator determines that an eligible entity may lack the technical, managerial, operations, maintenance, or financial capacity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412, and the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures); and

(B) the Administrator determines that the measures are necessary to ensure that the eligible entity has the technical, managerial, operational, maintenance, and financial capacity to comply with applicable national primary drinking water regulations over the long term.

(g) COST SHARING.—

(1) IN GENERAL.—

(A) LIMIT.—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(B) USE OF OTHER FEDERAL FUNDS.—To pay the portion of an eligible activity that is not funded by a grant under this section, an eligible entity located in an area governed by an Indian Tribe may use Federal financial assistance other than assistance received under this section.

(2) WAIVER OF COST-SHARING REQUIREMENT.—

(A) IN GENERAL.—The Administrator may waive the requirement of an eligible entity to pay all or a portion of the share of an eligible activity that is not funded by a grant under this section, based on a determination by the State that the eligible entity is unable to pay any or all of the share.

(B) LIMITATION.—For each fiscal year, the total amount of cost-share waivers provided by the Administrator to eligible entities located in an area governed by an Indian Tribe under subparagraph (A) shall not exceed 30 percent of the amount of funding used to provide grants to Indian Tribes under this part.

(h) UNOBLIGATED FUNDS.—Any funds not obligated by the small public water system assistance program established under subsection (a) for an eligible activity within 1 year after the date on which funds are made available to carry out this part shall be returned to the Administrator for use in providing new grants under this part.

SEC. 1473. REPORTS.

Not later than January 1, 2006, and annually thereafter through January 1, 2010, the Administrator shall—

(1) submit, to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report that, for the preceding fiscal year—

(A) lists the eligible activities for eligible entities that receive funds under this part for the preceding fiscal year;

(B) identifies the number of grants provided under this part to eligible entities located in areas governed by Indian Tribes, and in each State;

(C) identifies each eligible entity that receives a grant to carry out an eligible activity;

(D) identifies the amount of each grant provided to an eligible entity to carry out an eligible activity; and

(E) describes each eligible activity funded by such a grant (including the status of the eligible activity); and

(2) make the report under paragraph (1) available to the public.

SEC. 1474. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this part $200,000,000 for each of fiscal years 2005 through 2009.

* * * * * * *

PART G—SMALL PUBLIC WATER SYSTEM ASSISTANCE[2]

SEC. 1471. DEFINITIONS.

In this part:

[2]Note: This bill, as amended by the committee, includes different provisions for Sections 1471-1474.

(1) ELIGIBLE ACTIVITY.—

(A) IN GENERAL.—The term "eligible activity" means an activity that is carried out by an eligible entity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412.

(B) INCLUSION.—The term "eligible activity" includes source water protection.

(C) EXCLUSION.—The term "eligible activity" does not include any activity to increase the population served by a public water system, except to the extent that the Administrator determines an activity to be necessary to—

(i) achieve compliance with a national primary drinking water regulation; and

(ii) provide a water supply to a population that, as of the date of enactment of this part, is not served by a safe public water system.

(2) ELIGIBLE ENTITY.—The term "eligible entity" means—

(A) a small public water system that—

(i) if located in a State, serves a community that, under affordability criteria established by the State under section 1452(d), is determined by the State to be—

(I) a disadvantaged community; or

(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State; or

(ii) if located in an area governed by an Indian Tribe, serves a community that is determined by the Administrator, under criteria published by the Administrator under section 1452(d) and in consultation with the Secretary, to be—

(I) a disadvantaged community; or

(II) a community that would otherwise become a disadvantaged community as a result of carrying out an eligible activity, as determined by the State; and

(B) a public water system that—

(i) would incur $3,000,000 or more in costs in complying with national primary drinking water regulations promulgated under this Act; and

(ii) is a disadvantaged community or a community may otherwise become disadvantaged as a result of carrying out an eligible activity, as determined by the State.

(3) PROGRAM.—The term "program" means the small public water system assistance program established under section 1472(a).

(4) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services, acting through the Director of the Indian Health Service.

(5) SMALL PUBLIC WATER SYSTEM.—The term "small public water system" means a public water system (including a com-

munity water system and a noncommunity water system) that serves a population of 15,000 or fewer individuals.

SEC. 1472. SMALL PUBLIC WATER SYSTEM ASSISTANCE PROGRAM.

(a) ESTABLISHMENT.—Not later than July 1, 2006, the Administrator shall establish within the Environmental Protection Agency a small public water system assistance program for, and provide grants to, eligible entities for use in carrying out eligible activities.

(b) PRIORITY.—

(1) IN GENERAL.—The Administrator shall provide grants to eligible entities for eligible activities that—

(A) address the most serious risks to human health from lack of compliance with the regulations specified in subparagraph (B);

(B) are necessary to ensure compliance with national primary drinking water regulations applicable to eligible entities under section 1412; and

(C) assist systems serving communities that are most in need, as calculated on the basis of median household income, under affordability criteria established by the State under section 1452(d) (or, in the case of eligible entities in an area governed by an Indian Tribe, under affordability criteria established by the Administrator, in consultation with the Secretary).

(2) MANAGEMENT COOPERATIVES.—The Administrator shall consider giving priority for grants under this section to eligible activities that are carried out by communities that form management cooperatives.

(d) TECHNICAL ASSISTANCE.—In providing grants under this section, the Administrator shall—

(1) use not less than 1.5 percent of funds made available to carry out this section to provide grants to nonprofit technical assistance organizations to be used to assist eligible entities in—

(A) assessing needs relating to eligible activities;

(B) identifying additional available sources of funding to meet the cost-sharing requirements under the program; and

(C) planning, implementing, and maintaining any eligible activities of the eligible entities that receive funding under this section;

(2) require that none of the funds provided under paragraph (1) be used to pay for lobbying expenses; and

(3) require that for each fiscal year, not more than 5 percent of the funds received by an eligible entity under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities for which funding is provided under this section.

(e) INDIAN TRIBES.—

(1) IN GENERAL.—In providing grants under this section, the Administrator shall use not less than 3 percent of funds made available to carry out this section for each fiscal year to provide grants to eligible entities that are located in areas governed by Indian Tribes.

(2) PROGRAM PRIORITY REQUIREMENT.—

(A) LIST OF ELIGIBLE ACTIVITIES.—

(i) IN GENERAL.—The Administrator, in consultation with the Secretary, shall, for each fiscal year, identify, and, consistent with subsection (b) and considering the criteria described in subparagraph (B), list in descending order of priority, eligible activities for eligible entities located in areas governed by Indian Tribes for which funds provided from a grant under this part may be used.

(ii) COORDINATION.—

(I) IN GENERAL.—To the maximum extent practicable, the Administrator shall ensure that the preparation of the list under clause (i) is coordinated with any needs assessment conducted under section 1452(i)(4).

(II) ADDITIONAL CONSIDERATION.—Any additional financial needs of small public water systems located in areas governed by Indian Tribes that are associated with the cost of complying with a national primary drinking water regulation (including a regulation concerning arsenic) that is promulgated after the then most recent needs survey conducted under section 1452(i)(4) shall be factored into the determination of financial need for, and prioritization of, eligible activities under this section.

(B) CRITERIA.—The Administrator shall, in preparing a list under subparagraph (A), consider giving priority to any listed eligible activities that are to be carried out by communities that form management cooperatives (including management cooperatives between systems that do not have public water system connections).

(3) ALLOCATION OF GRANT FUNDING.—For each fiscal year, the Administrator, in consultation with the Secretary, shall provide grants to eligible entities located in an area governed by an Indian Tribe for the maximum number of eligible activities for which the funding allocation makes assistance available, based on the priority assigned by the Administrator to eligible activities under paragraph (2).

(4) LIMITATION ON USE OF FUNDS.—For each fiscal year, not more than 5 percent of the funds received by an eligible entity located in an area governed by an Indian Tribe under this section may be used to obtain technical assistance in planning, implementing, and maintaining eligible activities that are funded under this section.

(f) LIMITATION ON RECEIPT OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a grant under this section shall not be provided to an eligible entity that, as determined by the Administrator—

(A) does not have the technical, managerial, operations, maintenance, or financial capacity to ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412; or

(B) is in significant noncompliance with any applicable national primary drinking water regulation.

(2) EXCEPTION FOR RECEIPT OF GRANT.—An eligible entity described in paragraph (1) may receive a grant under this section only—

(A) if the Administrator determines that use of the grant will ensure compliance with national primary drinking water regulations applicable to the eligible entity under section 1412;

(B)(i) to restructure or consolidate the facility to achieve compliance with applicable national primary drinking water regulations; or

(ii) in a case in which restructuring or consolidation of the facility is not practicable, if the Administrator determines that—

(I) the eligible entity has made a good faith effort to achieve compliance with applicable national primary drinking water regulations; and

(II) the eligible entity is adhering to an enforceable schedule for complying with those regulations; and

(C) in a case in which paragraph (1)(A) applies to an eligible entity, and the eligible entity if—

(i) the eligible entity agrees to undertake feasible and appropriate changes in operations (including changes in ownership, management, accounting, rates, maintenance, consolidation, provision of an alternative water supply, or other procedures); and

(ii) the Administrator determines that the measures are necessary to ensure that the eligible entity has the capacity described in paragraph (1)(A) to comply with applicable national primary drinking water regulations over the long term.

(3) REVIEW.—Before providing assistance under this section to an eligible entity that is in significant noncompliance with any national primary drinking water regulation applicable to the eligible entity under section 1412, the Administrator shall conduct a review to determine whether paragraph (1)(A) applies to the entity.

(g) COST SHARING.—

(1) IN GENERAL.—

(A) LIMIT.—Except as provided in paragraph (2), the share of the total cost of an eligible activity funded by a grant under this section shall not exceed 80 percent.

(B) USE OF OTHER FEDERAL FUNDS.—To pay the portion of an eligible activity that is not funded by a grant under this section, an eligible entity located in an area governed by an Indian Tribe may use Federal financial assistance other than assistance received under this section.

(2) WAIVER OF COST-SHARING REQUIREMENT.—

(A) IN GENERAL.—The Administrator may waive the requirement of an eligible entity to pay all or a portion of the share of an eligible activity that is not funded by a grant under this section, based on a determination by the State

that the eligible entity is unable to pay any or all of the share.

(B) LIMITATION.—For each fiscal year, the total amount of cost-share waivers provided by the Administrator to eligible entities located in an area governed by an Indian Tribe under subparagraph (A) shall not exceed 30 percent of the amount of funding used to provide grants to Indian Tribes under this part.

(h) UNOBLIGATED FUNDS.—Any funds not obligated by the small public water system assistance program established under subsection (a) for an eligible activity within 1 year after the date on which funds are made available to carry out this part shall be returned to the Administrator for use in providing new grants under this part.

SEC. 1473. REPORTS.

Not later than January 1, 2006, and annually thereafter through January 1, 2010, the Administrator shall—

(1) submit, to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives, a report that, for the preceding fiscal year—

(A) lists the eligible activities for eligible entities that receive funds under this part for the preceding fiscal year;

(B) identifies the number of grants provided under this part to eligible entities located in areas governed by Indian Tribes, and in each State;

(C) identifies each eligible entity that receives a grant to carry out an eligible activity;

(D) identifies the amount of each grant provided to an eligible entity to carry out an eligible activity; and

(E) describes each eligible activity funded by such a grant (including the status of the eligible activity); and

(2) make the report under paragraph (1) available to the public.

SEC. 1474. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this part $1,000,000,000 for each of fiscal years 2005 through 2008.

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[42 U.S.C. 1962)—JUL. 22, 1965]

WATER RESOURCES PLANNING ACT

SHORT TITLE

SECTION. 1. This Act may be cited as the "Water Resources Planning Act".

* * * * * * *

SEC. 101. There is hereby established a Water Resources Council (hereinafter referred to as the "Council") which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, *the Secretary of Homeland Security,* the Secretary of the Army, the

Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Chairman of the Federal Power Commission. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President.

[SEC. 102. The Council shall—]

SEC. 102. DUTIES OF COUNCIL.

(a) IN GENERAL.—The Council shall—

[(a)] *(1)* maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; [and]

[(b)] *(2)* maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs[.] *; and*

(3) carry out a special water resources study in accordance with subsection (b).

(b) SPECIAL WATER RESOURCES STUDY.—

(1) IN GENERAL.—The Council shall carry out a special water resources study to—

(A) use existing water assessments and conduct such additional assessments as are necessary to project future water supply and demand;

(B) study water management programs used by the Federal Government, State and local governments, and private entities to increase water supplies and improve the availability, reliability, and quality of freshwater resources;

(C) consult with agencies and entities to develop recommendations consistent with laws (including treaties, decrees, and compacts) for a comprehensive water strategy that—

(i) respects the primary role of States in regulating water rights and uses;

(ii) identifies incentives to ensure an adequate and dependable supply of water through the year 2054;

(iii) suggests strategies to avoid increased mandates on State and local governments;

(iv) eliminates duplication and conflict among Federal programs;

(v) considers all available technologies and methods to optimize water supply reliability, availability, and quality, while safeguarding the environment;

(vi) recommends means of capturing excess water and flood water for conservation and use in a drought;

(vii) suggests financing options for—

(I) water supply and water management projects; and

(II) appropriate public works projects;

(viii) suggests strategies to conserve existing water supplies, including recommendations for repairing aging infrastructure; and

(ix) includes other objectives relating to the effective management of the water supply to ensure reliability, availability, and quality;

(D) evaluate Federal water programs in existence on the date of enactment of this paragraph and submit to Congress and the President recommendations on—

(i) means of eliminating discrepancies between the goals of the programs and actual service delivery;

(ii) duplication among programs; and

(iii) any other circumstances that interfere with the effective operation of the programs;

(E) based on a review of water plans, develop and make available to the public water planning models to reduce water resource conflicts; and

(F) develop and coordinate public awareness activities to provide the public with access to understandable informational material, including, at a minimum—

(i) descriptions of the value and benefits of land stewardship to reduce the impact of water shortages; and

(ii) clear instructions for appropriate responses to water supply shortages, including—

(I) water conservation;

(II) water reuse; and

(III) detection and elimination of water leaks.

(2) CONSULTATION.—In carrying out this subsection, the Council shall consult with interested groups, including groups that represent—

(A) agricultural production, wildlife, and fishery interests;

(B) forestry and fire management interests;

(C) rural and urban water associations;

(D) environmental interests;

(E) engineering and construction interests;

(F) the portion of the scientific community that is concerned with climatology and hydrology;

(G) resource-dependent businesses and other private entities (including the recreation and tourism industries); and

(H) any other group, organization, or entity that the Council considers necessary to advance the work of the Council.

(3) REPORTS.—

(A) INTERIM REPORTS.—Not later than 180 days after the first meeting of the Council following the date of enactment of this paragraph, and every 180 days thereafter, the

Council shall submit to the President, the Committee on Energy and Natural Resources and the Committee on the Environment and Public Works of the Senate, and the Committee on Resources, the Committee on Transportation and Infrastructure, and the Committee on Energy and Commerce of the House of Representatives an interim report that describes the progress made by the Council in carrying out this subsection.

(B) FINAL REPORT.—As soon as practicable, but not later than 3 years, after the date of the first meeting of the Council referred to in subparagraph (A), the Council shall submit to the President and the Committees referred to in subparagraph (A) a final report that includes—

(i) a detailed statement of the findings and conclusions of the Council; and

(ii) recommendations for legislation and other policies to implement those findings and conclusions, including—

(I) a list of recommendations that can be implemented immediately in accordance with existing law; and

(II) a list of recommendations that require statutory changes prior to implementation.

* * * * * * *

SEC. 401. There are authorized to be appropriated to the Water Resources [Council:] *Council each of the following amounts:*

[(a)] *(1)* The sum of $2,886,000 for fiscal year 1979 for the Federal share of the expenses of administration and operation of river basin commissions, including salaries and expenses of the chairmen, but not including funds authorized by [subsection (c) below:] *paragraph (3):* Provided, That not more than $750,000 annually shall be available under this subsection for any single river basin commission[;[.

[(b)] *(2)* [the sum] *The sum* of $2,668,000 for fiscal year 1979 for the expenses of the Water Resources Council in administering this Act, not including funds authorized by [subsection (c) below[;] *paragraph (3).*

[(c)] *(3)* The sum of $3,179,900 for fiscal year 1979 for preparation of assessments, and for directing and coordinating the preparatin of such river basin plans as the Council determines are necessary and desirable in carrying out the policy of this Act: Provided, That $828,900 shall be available under this subsection for preparation of the Columbia River Estuary Special Study: Provided further, That $308,000 shall be available under this subsection for preparation of the New England Port and Harbor Study and $135,000 shall be available for completion of the Hudson River Basin Level B Study: Provided further, That $150,000 shall be available under this subsection for completion of Case Studies of the Application of Cost Sharing Policy Options for Flood Plain Management in the Connecticut River Basin: Provided further, That not more than $2,500,000 shall be available under this subsection for the preparation of assessments: Provided further, That the Council may transfer

funds authorized by this subsection to river basin commissions and to Federal and State agencies upon such terms and conditions as it determines are necessary and desirable to carry out the above functions in an economical, efficient, and timely manner, and that such commissions and agencies are hereby authorized to receive and expend such funds pursuant to this subsection.

(4) The sum of $9,000,000 for fiscal year 2005 to be used to carry out the special water resources study under section 102(b), to remain available until expended.

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