



Testimony

“Reinvestment and Rehabilitation of the Nation's Drinking Water Systems”

**Subcommittee on Environment
House Energy and Commerce Committee**

Thursday, March 16, 2017

**By Randy Ellingboe
Manager, Drinking Water Protection Section
Minnesota Department of Health
and President
Association of State Drinking Water Administrators (ASDWA)**

Good Morning Chairman Shimkus and Members of the Subcommittee. Thank you for this opportunity to talk about our Nation’s drinking water systems and how state drinking water programs support them. My name is Randy Ellingboe and I am the Manager of the Drinking Water Protection Section within the Minnesota Department of Health. I am also the President of the Association of State Drinking Water Administrators (ASDWA), whose 57 members include the 50 state drinking water programs, five territorial programs, the District of Columbia and the Navajo Nation. Our members and their staff are on the front lines every day, ensuring safe drinking water and protecting public health. Their technical assistance and support, as well as oversight of the drinking water systems, are critical to providing safe drinking water and protecting public health.

Today, I’d like to talk with you about three critical components of the Safe Drinking Water Act – the Public Water System Supervision (PWSS) program; the Drinking Water State Revolving Loan (DWSRF) program; and the DWSRF set-asides and how these three components are implemented in support of drinking water systems. Think of these components as a Venn diagram with public health protection at the core of the three interlocking circles of PWSS, DWSRF, and set-asides. No single component, taken alone, provides comprehensive public health protection...but when taken together, the people of the United States know that they can have confidence in the availability and quality of the water they drink every day. Sufficient Federal funding associated with these components is essential for maintaining the safety of drinking water across the country.

Overview

For each of the 50 state drinking water programs, territorial programs, and the drinking water program of the Navajo Nation, our principal and enduring goal is public health protection. Vibrant and sustainable communities, their citizens, workforce, and businesses all depend on a safe, reliable, and adequate supply of drinking water. Economies only grow and sustain themselves when they have safe and reliable water supplies. Over 90% of the population receives water used for bathing, cooking, fire protection and drinking from a public water system – *overseen by state drinking water program personnel*. In addition, the availability of adequate supplies of safe water is often a critical factor in attracting new businesses to communities. Public water systems – as well as the cities, villages, schools, and businesses they support -- *rely on state drinking water programs* to ensure they are in compliance with all applicable Federal requirements and the water is safe to drink.

The PWSS Program

To meet the requirements of the Safe Drinking Water Act (SDWA), states have accepted primary enforcement responsibility for oversight of regulatory compliance and technical assistance efforts for over *151,000 public water systems* to ensure that potential health-based violations do not occur or are remedied in a timely manner. More than 90 contaminants are regulated by Federal drinking water requirements and the complexity of these requirements has significantly increased in recent years. For example, enhanced treatment requirements for surface water systems now include separate filtration performance requirements. More recent regulatory requirements call for individual surface water system evaluations for *Cryptosporidium* inactivation and removal. The Groundwater Rule calls for individual disinfection determinations to be made. The Revised Total Coliform Rule uses a “find & fix” regulatory approach where the answer to the problem may not always be clear. These decisions are not made in isolation. These regulatory evaluations and resultant actions are generally made in consultation with the state drinking water program to ensure that the evaluations result in the best choice for the water system in terms of compliance, affordability, and efficiency. The primacy agencies accept these responsibilities as part of implementing the PWSS program.

The federal regulations also require states to conduct top to bottom or full system inspections known as sanitary surveys on a regular basis. These inspections provide states with first-hand information as part of their oversight role for public water systems.

Beyond the contaminants covered by Federal drinking water regulations, states are also implementing an array of *proactive* initiatives to protect public health from “source to tap.” These include source water assessments and protections for communities and watersheds; training and technical assistance for water treatment plants and distribution systems for challenged utilities; and optimization of overall water system performance. States also are responsible for their operator certification programs, to ensure that the staff operating the treatment plants and the distribution systems are appropriately trained and have the adequate experience based on the complexities of the plant and the distribution

system. These components, both regulatory and non-regulatory, are the responsibilities of state primacy agencies within the PWSS program.

Well supported state drinking water programs are a good deal for America.

1976 was the first fiscal year in which funds were appropriated for the PWSS program. That year, all 50 states shared \$7.5 million – or roughly \$150,000 per state to oversee implementation of slightly more than 25 contaminants. By 1996, 20 years later, the award had grown to \$70.3 million for states – and averaged about \$1.4 million per state to oversee regulation of around 70 contaminants. Now after another 20 years have passed and the additional responsibilities of the 1996 amendments to the SDWA are being implemented, the PWSS program received \$101.96 million in 2016 – an average distribution of \$2 million per state but a jump of about 25 new contaminants and increasingly complex regulations to be overseen.

While this may sound like a healthy increase in funding over the past 40 years, during that same period, the population of the United States grew from 222.6 million to 321.9 million and each of those individuals expected to be able to turn on their taps, wash their clothes, and bathe their children in water that is safe. At the same time, the number of regulated contaminants grew from around 26 to more than 90, and the regulations for these contaminants have grown increasingly complex.

A success story? Definitely, as many substantial risks in drinking water have been reduced with the increased number of contaminants being regulated. A sustainable story? Not likely. State drinking water programs are extremely hard pressed financially and the funding gap continues to grow. States must accomplish all the above-described activities - - and take on new responsibilities -- in the context of a challenging economic climate and increased expectations.

Originally, Federal funding was intended to cover 75% of the costs for a state to implement the PWSS program. Over the years, that Federal contribution has decreased to slightly more than 60%. State funding has historically compensated for this decline, but state budgets have been less able to bridge this funding gap in recent years. State drinking water programs have often been expected to do more with less and states have always responded with commitment and integrity, but they are currently stretched to the breaking point. Federal funding support necessary to maintain compliance levels and meet expectations has been essentially “flat-lined” for the past several years. It is essential that the PWSS funding be increased to meet these increasing regulatory needs. Insufficient Federal support for this critical program increases the likelihood of contamination events that puts the public’s health at risk.

The DWSRF Program

The 1996 SDWA Amendments opened new doors and provided exciting new opportunities for states to be able to support the infrastructure needs of their drinking water systems – large and small. With the advent of the Drinking Water State Revolving Loan Fund

(DWSRF), states could award project dollars to utilities to help them upgrade their treatment plants, rehabilitate their distribution systems, install more protective technologies, and generally improve their aging infrastructure. Many states have also used no-interest loans and principal forgiveness to assist disadvantaged communities with their infrastructure needs, but caution is needed in using these incentives due to potential long-term consequences in the ability of the DWSRF to revolve. In the core DWSRF program, approximately \$18 billion in cumulative Federal capitalization grants since 1997 have been leveraged by states into over \$29 billion in infrastructure loans to small and large communities across the country. Such investments are now being paid back and being loaned out again and pay tremendous dividends -- both in supporting and growing our economy and in protecting our citizens' health.

States have very effectively and efficiently leveraged Federal dollars with state contributions to provide assistance to more than 10,000 projects – all, once again, to enhance and sustain public health protection for millions of Americans. But the infrastructure funding needs are huge and more effort is needed to provide a wide range of tools for infrastructure financing. Last week, the American Society of Civil Engineers gave the nation's drinking water infrastructure a D grade (down from D+ last year) and EPA's most recent National Drinking Water Infrastructure Needs Survey (2011) indicated that drinking water system infrastructure needs total \$384 billion over the next 20 years; \$72.5 billion of that total is needed to prevent contamination of 73,400 water systems.

With that great need, the federal role needs to be increased, and we would recommend expanding the DWSRF as one of the tools to begin to address the great infrastructure gap. The DWSRF has the track record for successfully funding a wide range of drinking water infrastructure projects to promote the economic well-being of the community as well as protect public health.

A potential complementary new funding approach for infrastructure financing has resulted from the Water Infrastructure Financing and Innovation Act (WIFIA). Both WIFIA and the DWSRF programs are useful in meeting drinking water infrastructure needs; however, it is important to understand that the programs serve different purposes and meet different needs. One cannot and should not be substituted for the other. To offer just a few examples, WIFIA loans are intended to support funding needs for primarily large scale water improvement projects. DWSRF loans are designed to meet public health protection needs and often extend beyond physical infrastructure to fund projects for source water protection and system interconnections. The DWSRF, through its set-asides, also funds programs to train and certify operators and help systems return to compliance. WIFIA offers an opportunity for smaller systems to bundle their project needs to be able to meet the \$20 million minimum loan threshold; however, few small systems have the knowledge and wherewithal to collaborate on such an application and coordinate the timing of their funding needs. The states also do not have the capacity to bundle these small projects. As of 2016, of the over 12,000 DWSRF project agreements, 71% have been for communities serving less than 10,000 people. Additionally, the DWSRF provides loans to these smaller systems individually in increments as low as \$3,500, as evidenced by a 2010 project in my own state of Minnesota. The two funding programs are fundamentally

different. ASDWA sincerely hopes that these distinctions will inform Congressional funding decisions and that we never see a circumstance in which one program is funded at the expense of the other.

Set-aside Program

Set-asides are unique to the drinking water program. They allow states to reserve up to 31 percent of DWSRF funds for specific purposes. There is a 4% reservation for state DWSRF program administration that supports state administration of the loans and oversight of the projects. A 2% small system technical assistance setaside helps train and assist operators of small water systems where it can be a challenge to meet all the drinking water requirements. States may reserve 10% of the DWSRF's capitalization grant in any year to support other PWSS program activities where there is an additional need. Additional uses include implementation of a capacity development program to support system needs for technical, managerial, and financial capabilities and training and certification for operators. This setaside also provides funding for states when adopting and managing the new rules while continuing to provide oversight for existing rules.

Another setaside provision allows a reservation of 15% (of which any individual use may not exceed 10%) for: land acquisition/conservation easements; implementation of voluntary, incentive-based source water quality protection measures; expenditures to delineate or assess source water protection areas; and expenditures to establish and implement wellhead protection programs. This setaside also provides assistance for water systems through the state's capacity development strategy.

Through these set-asides, states may offer training and technical assistance to communities in need; help identify source water protection initiatives; enhance operator training and certification; and further support traditional PWSS compliance initiatives. Set-asides are thus an essential source of funding for states' core public health protection programs and these efforts work in tandem with infrastructure loans. Without the set-asides, these proactive strategies and initiatives would not be possible, thus jeopardizing the effectiveness of many state programs in their ability to support drinking water systems.

Looking Beyond Infrastructure

Two other elements of the SDWA program support the above three key components.

The Regulatory Process: Clearly, the DWSRF is critical to maintaining safe and reliable drinking water in the US. Through the direct loan program, its attendant set-asides, and the PWSS grant, Congress and EPA provide a foundation for the drinking water effort; however, this foundation must not remain static. We cannot be so focused on infrastructure and related funding needs that we neglect the science-based programs that also assure safe drinking water. Congress, in the 1996 Amendments to the SDWA, provided a robust, science-based process for identifying contaminants to be regulated. This also included actions that develop appropriate limits, monitoring frameworks, and treatment requirements. States agree that the bottom line for regulation should still be

whether there is a meaningful opportunity for health risk reduction. Having said that, state primacy agencies also support the need to be nimble in our approach to rule development. Using the experience gained through implementation of current rules and knowledge of local conditions, states can also provide input to rule language that will assure that the rule can be effectively implemented on the ground. That's a critical step to assuring compliance by water systems.

Water System Security and Resiliency: Water systems and state primacy agencies worked together after the Bioterrorism Act of 2001 to conduct the mandated vulnerability assessments and the emergency response plans. Since those regulatory requirements were completed, water systems and states have continued to grow in their collective knowledge of system security and resilience, and to tackle new and emerging issues such as regional resilience and cybersecurity. Water is considered one of the "lifeline" sectors by the Department of Homeland Security (DHS), and, as such, needs to be considered as a high priority when assessing funding options for water system improvements. Between FYs 2001 and 2009, states received an annual \$5 million grant to support their work with water systems in the areas of security, all hazards preparation, and overall resiliency. For example, states used those dollars to fund a "security coordinator," participate in mutual aid programs and initiatives, work with utilities to share information, provide training on new tools and strategies, support smaller systems with their efforts to enhance their security posture, and generally serve as a water security resource. That funding stream disappeared and states have had to significantly scale back their support activities for water systems. To enhance the capabilities of our Nation's water systems, those funds (or more) should be restored.

Summary

In summary, these three SDWA program elements – PWSS, DWSRF, and the Set-asides – and the supporting regulatory development and resiliency components, form an integrated and mutually supportive framework to achieve the principal goal of state drinking water programs – to protect public health. These three SDWA program elements, along with the dedicated State staff, form the foundation for the technical assistance and regulatory oversight that's necessary for safe drinking water.

ASDWA recommends that:

- The PWSS funding be increased to meet increasing regulatory needs;
- The DWSRF funding be increased; and
- Set-asides are maintained as these funds are essential for states' core public health protection programs and these efforts work in tandem with infrastructure loans.