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to the

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House Committee on Energy and Commerce

Trusting the Tap: Upgrading America's Drinking Water Infrastructure

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Executive Summary

ASDWA's state, territorial, and tribal members (hereinafter "states"), have been implementing the Safe Drinking Water Act (SDWA) and subsequent SDWA Amendments since the initial SDWA in 1974. Our members are co-regulators with the Environmental Protection Agency (EPA) and have considerable experience working through its many complexities, including the implementation of the Drinking Water State Revolving Loan Fund (DWSRF). ASDWA is thankful for the increased safe drinking water focused DWSRF funding from the Bipartisan Infrastructure Law (BIL). This funding represents a once-in-a-generation opportunity for an incredible amount of drinking water infrastructure improvements and protection of public health.

This testimony has three themes:

1. *Focusing on getting the lead out, everywhere* - ASDWA supports the replacement of all the lead service lines across the country from the water main to where the service line goes through the building wall. The development of inventories is the logical first step in getting the lead out and the BIL funding will provide the jump start needed for systems to begin the process of cataloguing the material of each drinking water service line. Replacement is the next step once lead service lines have been identified in the inventories. ASDWA requests that Congress considers providing flexibility for the additional subsidization for 100% loan forgiveness for lead service lines replacements. States collectively believe this provision will assist to address identification and replacement of lead service lines.
2. *Flexibility* – Flexibility in BIL implementation is critical to achieving the goal of helping systems and communities that need the funding the most. As stated in EPA's BIL memo, states are responsible for defining a disadvantaged community, taking local conditions into account. States and EPA need to work together to make applying for BIL funds a

streamlined, efficient, and simple process for all eligible public water systems. To foster a streamlined process, ASDWA recommends the development of waivers, in limited circumstances, for the requirements of the Buy America, Build America (BABA), and Davis-Bacon (DB) Acts to make these funds simpler to obtain for those most in need. We believe in the principles of BABA and DB; however, these requirements make the DWSRF process insurmountable for some systems that need the funding the most.

3. *Sustainability* – The sustainability opportunity that you have provided through the BIL is important to sustaining our nation's safe drinking water and the state programs that support, implement, and enforce the SDWA. Below are sustainability needs:
    a. Public Water System Sustainability - While the BIL funding is substantial, we do need to assure that public water systems are sustainable and can appropriately operate and maintain their infrastructure to provide safe drinking water.
    b. Fund Sustainability - States and EPA need to work together to ensure that the State Revolving Loan Funds (SRFs) are sustainable with the split of loans versus principal forgiveness, i.e., enough funds are paid back so that funds can be loaned out again and revolve as intended.
    c. Workforce and Safe Drinking Water Program Sustainability - The water sector needs a sustainable workforce throughout the BIL funding and beyond. Adequate staff is needed at state agencies and public water systems to finance, design, build and provide appropriate oversight for BIL infrastructure construction, including consulting engineers, certified water operators, technical service providers, and construction suppliers and contractors. Sustaining water infrastructure funding beyond BIL is critical, as the BIL funding is only the first step in addressing the current and future needs of our drinking water infrastructure.

d. Technology Sustainability - To ensure security and sustainability for the long term, we must recognize and address the growing cybersecurity threat facing our water systems and states.

Testimony

Good morning Subcommittee Chairman Tonko, Ranking Member McKinley, and Members of the Subcommittee. Thank you for this opportunity to appear before the Subcommittee and discuss how we can best address the protection of public health through the collaborative partnership among the states, tribes, territories, and the federal government in implementing the BIL funding and the Safe Drinking Water Act (SDWA). First and foremost, state drinking water programs wish to thank you for the BIL funding focused to address public drinking water. The BIL funds provide a unique opportunity for meaningful investment in the U.S. drinking water infrastructure.

My name is Lori Mathieu, and I am 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 have primary enforcement authority, or primacy, for the SDWA. Our members and their staff are the scientists and engineers on the front lines every day, implementing the SDWA by providing compliance assistance, technical assistance, support, enforcement, and oversight of drinking water systems, which is critical to ensuring safe drinking water and protecting public health. Our members assure the implementation of the laws under the SDWA. I am also the Public Health Branch Chief at the Environmental Health & Drinking Water Branch of the Connecticut Department of Public Health where I oversee under the direction of CT DPH Commissioner Manisha Juthani, Deputy Commissioner Heather Aaron a host of programs with over 100 staff within public drinking water regulation and environmental health protection including: primacy

program for public drinking water regulation, DWSRF program, Source Water Protection and Planning, PFAS/Emerging Contaminants Program, Office of Public Health & Climate, Food Protection, Environmental Assessment and Toxicology, Childhood Lead Poisoning Prevention Program, Occupational Health, Environmental Health Tracking, Beach Recreational waters, On-site septic waste and public pools environmental engineering program, Environmental Lab Certification, Environmental Health Certification, Drinking Water Operator Certification, Private well program, and Asbestos and Radon Program.

Today, I will discuss ASDWA's perspective on the implementation of the Bipartisan Infrastructure Law (BIL, P.L. 117-58), and the significant increase in drinking water infrastructure funding. My testimony has three themes:

- Focusing on getting the lead out, everywhere;
- Flexibility in BIL implementation; and
- Sustainability.

Background

The state primacy agencies are co-regulators with EPA in implementing the SDWA. EPA and states have always had a close working relationship. This cooperation is critical now more than ever and ASDWA's members will make the most of this once-in-a-generation opportunity presented to us.

ASDWA's members manage state-level drinking water programs to protect public health through safe drinking water. Our sanitary survey inspectors provide direct oversight and inspections of each and every public drinking water system in the country. Most of these inspectors are sanitary engineers and we rely on experienced skilled engineers to conduct

survey work in the field. Public water systems (PWSs) vary in size and complexity, ranging from restaurants and campgrounds to manufactured housing communities and expansive multi-jurisdictional municipal systems such as the City of New York, the Greater Boston area, Los Angeles, and every large city in between. Of the over 150,000 total regulated PWSs, there are 549 large systems serving over 100,000 people, and over 124,000 small systems serving under 500 people. Our engineers ensure the appropriate application of treatment for the removal of drinking water contaminants and these engineers review construction plans and specifications and provide invaluable technical assistance to water systems of all sizes. Engineers and environmental analysts also develop the Intended Use Plans (IUPs) and Project Priority Lists (PPLs), which are used to guide and manage the DWSRF Program. Our compliance and enforcement officers ensure drinking water systems comply with National Primary Drinking Water Regulations (NPDWRs) designed to protect public health, and our grants officers ensure the DWSRF funding is disseminated to communities in need and provide fiduciary oversight. ASDWA's members manage drinking water operator certification programs to ensure that system operators have the skills and knowledge to appropriately operate treatment plants and distribution systems. ASDWA's members also certify drinking water laboratories to ensure that compliance monitoring data is accurate. State staff ensure SDWA compliance to protect public health.

Moreover, state activities go well beyond ensuring compliance at the tap and these activities must be efficient given continued resource constraints. These activities have increased in depth and scope during the COVID-19 pandemic to include assisting with the development of continuity of operations plans for water systems, coordination with state-level Water and Wastewater Response Networks (WARNs) on operator coverage, emergency operation, and equipment and chemical supply issues due to the pandemic; developing COVID-19 drinking

water risk communication for the public and modifying “routine” drinking water public notices to clarify the connection or lack of connection to the coronavirus; developing new forms and processes for tracking closed facilities and revising reopening system and building procedures; and developing and implementing remote work and oversight tools. ASDWA’s members have a central role in protecting public health by ensuring that Americans have access to our most precious resource--safe drinking water.

At the state level, drinking water programs are funded through four sources:

- Public Water Supply Supervision (PWSS) grants from EPA;
- DWSRF set-asides;
- Fees from water systems for plan reviews, inspections, etc.; and
- General state funds.

State-provided funding has historically compensated for inadequate federal funding, but state budgets have been less able to bridge this funding gap in recent years, especially during the ongoing COVID-19 pandemic. Insufficient funding support for drinking water programs increase the likelihood of scenarios that put the public’s health at risk. The number of regulations requiring state implementation and oversight as well as performance expectations continue to grow while the federal funding increases have not kept pace. Inflation has further eroded the static funding levels. Not all state drinking water programs have the funding flexibility to be able to use all four of the funding sources named above.

The funding gap for state drinking water programs is significant. ASDWA's 2020 Resource Needs Report[1] estimated the funding gap for the PWSS program in 2020 to be $375 million, increasing to $469 million by 2029. The funding gap has increased by $197 million since the previous analysis in 2011 due to increasing demands on state programs to address new SDWA Rules, unregulated contaminants such as per- and polyfluoroalkyl substances (PFAS) and harmful algal blooms, lead in school drinking water, *Legionella*, and to respond to the COVID-19 pandemic. The federal share of program funding has decreased by 8% since the previous analysis in 2011. Without closing this gap, we increase the risk to our public drinking water and our work to protect public health. Increased PWSS funds provide for implementation of existing drinking water rules, compliance assurance, and enforcement of drinking water quality requirements. It is a small price to pay for public health protection. Not all state drinking water programs have the benefit to use all the DWSRF set-asides to assist with the funding gap.

It should also be noted that because the Congressionally Directed Spending (earmarks) are being taken out of the DWSRF appropriations, the set-aside amounts will be reduced by about 35% compared to the 2021 appropriation – even though the appropriation amounts were the same between 2021 and 2022. ASDWA recognizes the need for some Congressionally Directed Spending, and the potential financial impacts to the drinking water programs needs to be recognized in future discussions on earmarks.

ASDWA recognizes and is thankful for the water infrastructure funding that Congress provided for the DWSRF program through the BIL. This unprecedented amount of funding will support vital drinking water infrastructure and will support continued public health protection. The

[1] 2019 Analysis of State Drinking Water Programs Resources and Needs, 2020. https://www.asdwa.org/wp-content/uploads/2020/07/2019-Analysis-of-State-Drinking-Water-Programs-Resources-and-Needs.pdf

funding will provide an opportunity for states to work with our regulated drinking water systems to address long-standing problems like decaying/aging infrastructure and promoting the replacement of lead service lines. The funding will also help us to address new problems with emerging contaminants, such as PFAS.

ASDWA is thankful for the emphasis Congress placed to ensure that funding from the BIL will go to those communities that need it the most. By prioritizing infrastructure projects for disadvantaged communities, states will have the opportunity to ensure health equity and to address long-standing issues facing these communities in ways that promote long-term sustainability of the drinking water system.

Challenges facing the water industry remain significant and impact the lives of Americans every day. Proactive replacement of drinking water lead service lines will continue to be an important effort to get the lead out, along with a robust SDWA rule-making effort to re-evaluate and improve the regulations for lead in drinking water.

We need to collectively focus on getting the lead out, everywhere.

ASWDA supports removing all the lead service lines across the county from the water main to where the service line goes through the building wall. While lead service lines pose the greatest risk of exposure to lead from drinking water, numerous other potential pathways of exposure are also important. In addition to lead service lines, Americans can be exposed to lead from lead plumbing connectors, commonly referred to as goosenecks or pigtails, as well as lead solder, lead plumbing, and lead paint within the home. Connecticut's Governor Lamont has proposed Bill 5045 focused on protecting our state's children from harmful lead exposure. Continued prioritization of lead removal from all sources will be important moving forward. Water systems

will need to focus on getting the lead out of their distribution by removing lead pigtails and goosenecks, in addition to removing the lead service lines serving their consumers. Further education is also needed for the public so that consumers can take necessary action to protect themselves from all potential lead sources within their homes.

The development of lead service line inventories is the logical and necessary first step in getting the lead out of America's drinking water systems—you must know where the lead is to remove it. Identifying the locations of these lines will be extremely challenging. Detailed records on both the public and private sides of services lines are lacking nationwide and uncovering the lines to identify them can be expensive and time-consuming. However, the state drinking water programs and the drinking water industry is up for this challenge. EPA, states, and water systems are working together to employ any and all innovative solutions to overcome the barriers surrounding lead service line identification and replacement. We cannot do this alone as state programs, this is a team approach from all agencies and systems.

BIL funding will provide the jumpstart needed for systems to begin the process of cataloging the material of every line serving each of their customers. Development of robust service line inventories, and subsequently removing the lead service lines, will be a continued effort over many years. As BIL funding gets rolled out, states will need flexibility in their applications for the capitalization grants so they can access set-asides to use for funding inventory development without having specific lead service line replacements in the state's intended use plan. Given the time necessary to develop inventories, states and water systems will need flexibility funding lead service line replacement projects as they work to locate these lines. State programs are already working with public water systems to understand and comply with the recently finalized Lead and Copper Rule Revisions (LCRR) where lead service line inventories are due to the

state programs by October 2024. EPA guidance is important to understand the requirements of the LCRR and we understand that EPA is moving forward with draft guidance documents.

Once lead service lines have been identified in a drinking water system's inventory, the next step will be to focus on the replacement of those lines. ASDWA requests that EPA provide flexibility for the additional subsidization for all PWSs to be eligible for 100% loan forgiveness for lead service line replacements. A single lead service line replacement can cost on average between $1,200 to $12,300[2]; and across the country, 6.1 to 10.2 million lead service lines need to be replaced in a timely manner[3]. An estimated 14,000 lead service lines need to be replaced in Albany, New York[4]. A water system with 100,000 lead service lines could need up to $1.2 billion to remove this lead hazard from their distribution system.

Flexibility in BIL implementation is critical to achieving the goal of helping the systems and communities that need the funding the most.

ASDWA is committed to working with EPA to advance health equity by identifying barriers within the drinking water sector and developing achievable and sustainable solutions for providing safe, reliable drinking water to all communities. This partnership is crucial to achieving the Biden administration's Justice40 goal of providing 40% of the benefits from federal investments to disadvantaged communities.

[2]EPA's Strategies to Achieve Full Lead Service Line Replacement, 2019. https://www.epa.gov/sites/default/files/2019-10/documents/strategies_to_achieve_full_lead_service_line_replacement_10_09_19.pdf
[3] National Survey of Lead Service Line Occurrence https://awwa.onlinelibrary.wiley.com/doi/abs/10.5942/jawwa.2016.108.0086
[4] 14,000 lead pipes carry Albany's drinking water. The city wants to replace them. https://www.timesunion.com/news/article/14-000-lead-pipes-carry-Albany-s-drinking-water-16411320.php

To best achieve President Biden's J40 goal, primacy agencies will need maximum flexibility in the way they implement the BIL funds. Within EPA's March 8, 2022, BIL Implementation memo from Assistant Administrator Radhika Fox, the agency makes it clear that the role of defining what constitutes a disadvantaged community lies with the states. ASDWA is appreciative of this clear recognition as those working in the state government and state agencies have the best knowledge of what their communities need.

Ensuring that all disadvantaged communities of any size can access these SRF funds is not a simple task. Many of these communities are incredibly small. For example, we have towns, villages, and manufactured housing communities with very small populations, perhaps serving only 25 people with fewer than twenty homes. These communities do not have the technical or managerial capacity to seek out and apply for the BIL funding through the DWSRF process. A joint effort between the states and EPA can help ensure these communities are getting their specific needs met. We believe this is where a state/EPA jointly developed Technology HUB idea can assist; focused and customized on the needs of the water systems in individual states.

We also need to work to make applying for BIL funds efficient and effective by streamlining the application process for communities. Requirements such as those found within the Buy America, Build America (BABA), and Davis-Bacon (DB) Acts create additional challenges and barriers for these communities that do not have the necessary expertise to navigate the process. ASDWA recommends the development of waivers of these requirements in certain limited circumstances to make these funds simpler to obtain for those most in need.

ASDWA and the states look forward to working with EPA on developing creative solutions to problems facing our industry, including the development of previously noted technical

assistance hubs to provide direct assistance to disadvantaged communities in obtaining BIL funding and implementing critical water infrastructure projects. As we look to implement these hubs, we must ensure that states are equal partners and that there is flexibility in how these hubs can be utilized to best fit the needs of the communities within each state. Primacy agencies are the boots on the ground and know what is most needed in their communities. A partnership between the states and EPA will ensure that these technical assistance resources are placed where they can make the most impact. Our membership believes that this can be an effective tool to further the state/EPA partnership to help streamline the process for systems applying for funding and provide needed relief for state programs that currently fill this role of technical assistance for small systems. Additionally, these hubs can be used to provide technical assistance for all systems, across the drinking water program, including the development of lead service line inventories and preliminary engineering reports that are needed before systems are able to apply treatment for contaminants. Technology HUBs can be one of the tools that helps to build and sustain water system capacity to ensure safe drinking water.

Further, ASDWA supports the use of EPA tools, such as the EJScreen, to help primacy agencies develop a definition of disadvantaged community that best suits the needs of the state's most vulnerable populations. We should also be encouraging the use of other tools that are available, such as the Centers for Disease Control and Prevention's (CDC's) Social Vulnerability Index and the Council on Environmental Quality's (CEQ's) Climate and Economic Justice Screening Tool. We need to utilize all the tools in our toolbox to identify and reach the communities that need us most to ensure safe drinking water.

EPA's BIL memo clearly stated that disadvantaged communities are not limited to small, rural cities and towns. ASDWA has consistently highlighted that smaller communities and neighborhoods within larger water systems can be equally disadvantaged although their circumstances may vary drastically. It is important that EPA and states work together to identify these unique situations and to brainstorm solutions that can be versatile and meet the specific needs of these communities. Flexibility on what can and should be considered a disadvantaged community is needed for successful implementation across each state drinking water program.

Systems that receive BIL funding must be sustainable.

The amount of BIL funding for water infrastructure is unprecedented and we need to collectively ensure that the systems that receive this funding are sustainable for the long term. These systems need to have adequate technical, financial, and managerial (TFM) capacity to continue to appropriately operate and maintain the facilities that are constructed with BIL funds. For example, systems that install treatment for removal of emerging contaminants such as PFAS must have rates that are sufficient to generate the revenue to pay for periodic media replacement and a certified water operator that knows how to operate advanced treatment to ensure proper treatment and water quality. Systems that rehabilitate a treatment plant with BIL funds need to have the ongoing revenue for the appropriate maintenance of those facilities. We want the BIL funds to encourage appropriate sustainable operational and management frameworks that are financially stable. State programs will continue to encourage public water systems to develop and implement asset and fiscal management plans.

EPA and ASDWA's members need to work together to ensure the DWSRFs are sustainable in the balance of loans versus grants/principal forgiveness, i.e., enough funds are paid back so that the funds can be loaned out again. This is a balancing act – ensuring that grants/principal

forgiveness is given to the communities that need them versus the communities that can afford to pay back loans. Since the DWSRF started, the total capitalization grants have totaled a little over $24 billion, and the pay back of loans, i.e., the revolving, has kept the total funds available for infrastructure construction about the same even with the additional subsidies and set-asides.

The water sector needs a sustainable workforce through the timeframe of the BIL funding and beyond. Adequate staff is needed at state agencies and water systems to finance, design, build and provide appropriate oversight for all the BIL construction, including consulting engineers, technical service providers, and construction suppliers and contractors. We need to collectively build a sustainable workforce of engineers, scientific staff, environmental analysts, and system operators for the long run – this is a significant issue in the water sector. Between the “Silver Tsunami” (baby boomers retiring) and the “Great Resignation” from the pandemic, finding qualified scientists, engineers, analysts, and operators is more than challenging. State programs are already building up new recruiting and staff sustainability processes to provide more opportunities for growth in our industry. Workforce development programs with continuous recruitment plans are now a necessary part of a state’s drinking water program.

We need to ensure that all water infrastructure is sustainable for the long term. We need to ensure the appropriate balance of BIL funds for lead service line replacements and treatment for emerging contaminants and the remainder of funds for much needed treatment plant upgrades, new sources of supply and for addressing the aging drinking water infrastructure such as distribution system lines, storage tanks, booster pumping stations, etc. EPA’s Sixth Drinking

Water Needs Survey[5] estimated that $472.6 billion is needed to maintain and improve the nation's drinking water infrastructure over the next 20 years. EPA's estimated total national need is more than fifteen times the BIL funding for drinking water infrastructure and for drinking water, failure is not an option. However, historic lack of investment in this critical infrastructure will continue to have the potential to pose a significant public health risk should deficiencies not be recognized or addressed. The BIL investment is an amazing opportunity, and it is an excellent boost in addressing the current and future needs of our drinking water infrastructure.

As we work to address the growing threats posed by aging infrastructure and both natural and man-made contaminants, drinking water is also facing new and increased threats from intentional and malicious sources. To ensure security and sustainability for the long term, we must recognize and address the growing cybersecurity threat facing our water systems and states. ASDWA membership has and will continue to work with EPA and the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) to ensure that our critical water infrastructure continues to be resilient and sustainable in the face of a malicious attack. We are committed to development of a comprehensive playbook that consistency and effectively works to address this ongoing threat to our nations drinking water.

As we participate in this hearing, ASDWA's members are working hard on BIL implementation and are already moving forward with open calls for projects under state's DWSRF programs. This unprecedented funding will improve the country's infrastructure and improve public health protection. We look forward to keeping Congress informed of our progress, truly appreciate this opportunity to provide our collective input from our 57 state and territory membership, and again

[5] EPA's 6th Drinking Water Infrastructure Needs Survey and Assessment, 2021. https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment

we sincerely thank you for the BIL funding to address safe drinking water and improve public health protection.

Again, thank you Chairman Tonko, Ranking Member McKinley, and Members of the Subcommittee for this opportunity to appear before the Subcommittee.