

Senate Committee on Environment and Public Works
Information-Gathering Process entitled, *“An Information-Gathering Process on Draft Legislation entitled, America’s Water Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020: Stakeholder Comments”*

April 22, 2020

Questions for the Record for Ms. VanDe Hei

Chairman Barrasso:

1. Several provisions in the draft Drinking Water Infrastructure Act of 2020 provide funding through grant programs, including the new Drinking Water Infrastructure Discretionary Grants program in Section 14.

How critical are these type of grant programs to public water systems?

Response: AMWA believes that water systems should implement rate structures that enable them to be financially self-sustaining. The federal government has historically supported this objective by offering low-cost infrastructure project financing opportunities through the Drinking Water State Revolving Fund and Water Infrastructure Finance and Innovation Act programs, and by enabling communities to finance infrastructure by issuing tax-exempt municipal bonds. However, targeted federal grant assistance can also play an important role. The Drinking Water Infrastructure Discretionary Grant program proposed in Section 14 offers the potential to give EPA an agile program that can be used to direct funding assistance to critical water projects across the country. Obtaining grants for major water infrastructure projects would help communities complete more projects and ease rate burdens on customers.

2. In recent years, Congress has made it a priority to produce water infrastructure bills every two years. As the Association of Metropolitan Water Agencies (AMWA) is the only policy-making organization for metropolitan drinking water providers in the country, why is it important to organizations like yours for Congress to include EPA programs in these biennial bills?

Response: AMWA strongly supports including EPA programs in these biennial water infrastructure bills. Unlike some other critical infrastructure sectors, there is no regularly occurring “must pass” legislation that Congress must consider to continue operation of EPA’s water infrastructure programs. Therefore, drinking water and wastewater policy needs are often overlooked as Congress addresses other infrastructure priorities. But since the 2014 WRDA legislation, which was the first time in recent years that EPA programs were included in a biennial WRDA bill, Congress has used this recurring water legislation to authorize or reauthorize EPA programs like WIFIA, the Drinking Water SRF, a water system resilience program, and programs to help schools, communities, and homeowners address lead in drinking water, among others. Continuing to include EPA programs in

biennial water infrastructure legislation will allow Congress to continue important oversight and reauthorizations of these important programs.

3. What are a few highlights from the Title II of the draft America's Water Infrastructure Act of 2020 and the draft Drinking Water Infrastructure Act of 2020 that you believe will be helpful to public water systems and organizations, like AMWA?

Response: Title II mostly focuses on wastewater infrastructure programs under the Clean Water Act, but AMWA appreciates that Section 2001 would create a Clean Water Infrastructure Resiliency and Sustainability Program to offer grant assistance to benefit publicly owned treatment works serving communities of all sizes. AMWA also strongly supports the reauthorization of the Water Infrastructure Finance and Innovation Act program included in Section 2014 of Title II. WIFIA offers low-cost financing for large-scale drinking water and wastewater infrastructure projects, generally expected to cost in excess of \$20 million.

Ranking Member Carper:

4. The Clean Water State Revolving Loan Fund (CWSRF) and the Water Infrastructure Finance and Innovation Act (WIFIA), both reauthorized in this draft legislation, provide significant funding to states so they can construct water infrastructure projects. How important is this funding to water utilities across the country, and do you support annual increases to these funding mechanisms?

Response: The Clean Water State Revolving Fund and the Drinking Water State Revolving Fund each deliver a specified share of funding to each state each year to help wastewater and drinking water systems finance water projects that protect public health and ensure compliance with federal standards. WIFIA is a nationwide competitive loan program that offers low-cost financing assistance to both drinking water and wastewater systems, to finance major water infrastructure projects that often may not be good candidates for SRF funding, either because of the large size of the project or because the project does not directly correlate with addressing an existing public health or regulatory compliance deficiency. Each is an important piece of the water infrastructure financing puzzle. AMWA supports annual increases to each of these funding mechanisms.

5. AWIA 2020 and the Drinking Water Infrastructure Act would both authorize increased funding for utilities that service small and medium-sized communities that would allow these utilities to improve their resiliency to extreme weather events.
 - a. What kinds of challenges does climate change pose to drinking water and wastewater systems?

Response: Climate change and its effects pose a range of challenges to drinking water and wastewater systems, including water scarcity due to

drought and diminishing snowpack, flooding that follows more frequent storms and heavy downpours, rising sea levels that lead to saltwater intrusion into groundwater supplies, and wildfires that put transmission infrastructure at risk.

- b. Do you think that the availability of resiliency funding should be expanded to include utilities that service populations of all sizes?

Response: Yes, drinking water and wastewater utilities of all sizes need to build their resilience to these effects.

- c. Would there be any negative implications for small, rural and disadvantaged communities by expanding these programs to utilities of all sizes?

Response: No, particularly if Congress follows the model of other successful infrastructure assistance programs such as the DWSRF or WIFIA and reserves a portion of annual program funding for small, rural, or disadvantaged communities.

6. AWIA 2020 doubles the amount of funding for workforce development programs, and expands eligible entities to include public works department and agencies.

- d. Do you think this investment will help utilities be more prepared, especially in the face of workforce shortages we are seeing during the COVID-19 pandemic?

Response: Yes, AMWA supported creation of the water infrastructure and workforce investment program in the 2018 AWIA legislation, and we believe sustained investment in the program will help the water sector make progress in responding to workforce shortages.

- e. What else should we be doing to ensure that there is adequate workforce training, especially for large metropolitan systems?

Response: Congress should explore ways to support ongoing efforts to develop the water sector workforce. For example, one AMWA member has initiated a working relationship with its state's university system to develop curriculum for a four-year public utility management degree that offers concentrations in several areas, including water and wastewater. Dedicated federal financial aid for students enrolling in similar programs would encourage more individuals to explore this career path.

7. The Drinking Water Infrastructure Act of 2020 also includes significant increases in funding to address and remediate lead and other contaminants in drinking water systems, including lead and PFAS. What kinds of contamination do drinking water systems tend to see most often, and how will these funds help ensure access to clean drinking water, especially in the face of a global pandemic where the first line of response is the ability to

wash ones hands with soap and water?

Response: The U.S. Environmental Protection Agency has established legal limits on more than 90 contaminants in drinking water. Drinking water systems regularly test for each of them, as well as some unregulated contaminants such as chemicals in the PFAS family. Additional funding authorized in the Drinking Water Infrastructure Act of 2020 for programs targeting lead and emerging contaminants like PFAS will, if appropriated, serve as a dedicated resource that water systems can draw on to address these particular contaminants. That will leave those water systems with more resources to make other critical investments in the system.

8. In your testimony, you stated that:

“Moreover, AMWA believes that any provision relating to environmental cleanup of PFAS under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) must shield water and wastewater systems from liability when they have legally disposed of water treatment byproducts containing PFAS. There should be a clear distinction between polluting entities that introduced PFAS into the environment and water and wastewater systems that are on the front lines of cleaning up the contamination. Water and wastewater systems are not the producers of PFAS, but instead are the receivers of the chemicals. A water system that follows all applicable laws in its management of water treatment byproducts containing PFAS, but is still held liable for cleanup costs under CERCLA, would effectively be penalized twice: once when making investments to remove PFAS from their source waters, and again when the system is forced to pay to cleanup PFAS contamination elsewhere. Ultimately, the cost of these burdens would fall on ratepayers.”

- a. There are approximately 800 substances designated as hazardous substances under CERCLA. Many of them are widely-used and they end up in drinking and waste water, including: acetone (the active ingredient in nail polish remover), acetic acid (vinegar), lead, some pharmaceuticals, and some chemicals used to purify drinking water. Water and wastewater systems are not shielded from liability when they have legally disposed of water treatment byproducts containing these CERCLA hazardous substances, and nor are they the producers of these substances. Why do you believe a liability shield should exist for PFAS if PFAS are designated as hazardous substances under CERCLA when no such shield exists for the hundreds of other CERCLA hazardous substances?

Response: PFAS do not degrade and appear to be far more prevalent in the environment than many of these other substances. As a result, PFAS are likely to be present in virtually any landfill that ever accepted waste like food packaging, personal care products, carpeting, fabrics, nonstick pans, makeup, or any other consumer product that was manufactured with PFAS. Even if the parties responsible for the disposal of these items could be identified, they might avoid liability due to CERCLA’s municipal solid waste exemption. Conversely, drinking water systems that remove PFAS from

water supplies generate brines or filtration media that contain relatively high concentrations of PFAS, which then must be disposed of in accordance with the law. Water utilities that dispose of these byproducts would be one of the few entities that could be documented to have directly contributed PFAS to a given waste site – even if they only collected PFAS in the first place because polluters had put it in water supplies, which drinking water systems then had to remove and dispose of. In other words, a waste site may have multiple sources of PFAS, but if PFAS are designated as hazardous substances then water systems are uniquely positioned to be held liable under the current CERCLA statute for the cleanup of a site’s PFAS pollution.

- b. CERCLA allows utilities, or other parties, to assert their innocence in the event they are sued but believes the ultimate responsibility for the contamination they discharged lies elsewhere. In *Westfarm Assocs. Ltd. P’ship v. Washington Suburban Sanitary Comm’n*, 66 F.3d 669 (4th Cir. 1995) a utility was found to have liability under CERCLA because the utility was aware of the disposal of the chemical PCE, as well as of cracks in the sewer in the area of the contamination, but nevertheless took no remedial action. The court found that contamination was foreseeable and the defendant utility took no preventative measures, and thus the third-party defense under CERCLA was not available. In advocating for a liability shield, is it AMWA’s view that a utility should bear no responsibility for addressing PFAS contamination under CERCLA if they are aware of broken infrastructure and took no action to address it?

Response: AMWA supports CERCLA liability protections for drinking water systems that legally dispose of water treatment byproducts that contain PFAS. AMWA has not requested a CERCLA liability shield for utilities beyond that narrow circumstance.

9. The Drinking Water Infrastructure Act of 2020 makes several changes to the Drinking Water State Revolving Loan Fund, including directing states to use the funds to provide grant support to utilities. The bill also authorizes a discretionary grant program that can be used as an additional funding source for projects that are underfunded. Looking at these provisions, how will they help to improve water project financing? Do you believe they are likely to help communities be able to complete more projects?

Response: The Drinking Water Infrastructure Act of 2020 would codify a requirement from appropriations legislation for states to use at least 20 percent of their annual share of DWSRF funds for grants, negative interest loans, or principal forgiveness to help water systems finance projects or restructure debt. While this set aside will certainly help some individual systems more affordably finance projects, because the loans will not be paid back it will also reduce the total amount of funds that a given state has revolving through its program. The bill would also authorize a new discretionary grant program that EPA can use to award funds to utilities for a variety of drinking water projects, which AMWA believes will help utilities stretch their available financing and potentially complete additional projects.

10. The Drinking Water Infrastructure Act of 2020 would authorize EPA to conduct a national needs assessment for rural and urban low-income communities. The goal is to improve Congress's and the Administration's understanding of the challenges facing low income customers when it comes to access to drinking water services.

a. What do you see as the biggest challenges facing low income customers?

Response: At the federal level, there is currently no nationwide assistance program designed to help low-income households pay water and sewer bills. So while low-income households can receive assistance to pay their heating and cooling bills through the LIHEAP program, there is no similar federal assistance available to help pay for drinking water or wastewater service. AMWA is eager to work with the committee to explore how such a program could be structured.

b. What factors lead to customer delinquencies in the payment of bills, especially during the COVID-19 pandemic, and how can we better support utility customers and prepare our water utilities to continue to provide necessary service?

Response: The severe job losses that accompanied the economic crisis related to the COVID-19 pandemic will certainly put a strain on household budgets, particularly low-income households that may already struggle to pay water and wastewater bills. Many water systems already had in place a variety of low-income assistance programs, like flexible payment terms, lifeline rates, or bill discounts, but often their scope is limited. This is because many states bar public water systems from using ratepayer funds to subsidize the rates of other customers; this means that local-level funding for ratepayer assistance programs must come from other sources. The creation of a federal program to help low-income households pay water and sewer bills would represent a dedicated pool of funds that utilities could use to support these assistance programs.

11. In the face of the COVID-19 pandemic, many water utilities are placing moratoriums on disconnections for non-payment. What federal actions should be considered to assist these utilities contend with any financial impacts associated with these moratoriums, as they maintain customers' water service, which is essential to protecting public health?

Response: The American Water Works Association reports that a recent survey of its members found that 92 percent of water systems have suspended customer water shutoffs for nonpayment due to COVID-19. Anecdotal information collected from AMWA members also supports this conclusion. However, customers benefiting from a shutoff moratorium generally will be charged for water they consume during the moratorium, and these new charges will be added to their past due balance. To keep these customers from falling even further behind, AMWA has called for Congress to implement a targeted low-income water rate assistance program that

would offer federal funds to subsidize the water bills of at-risk households, at least for the duration of the COVID-19 public health emergency.

Senator Cardin:

12. GAO released report 20-24, “Water Infrastructure: Technical Assistance and Climate Resilience Planning Could Help Utilities Prepare for Potential Climate Change Impacts,” in February 2020 in response to a request from me and Senator Whitehouse. The report cites EPA’s most recent estimates indicating that drinking water infrastructure funding needs totaled \$473 billion (as of 2015), and wastewater infrastructure needs totaled \$271 billion (as of 2012). The report describes the impacts of climate change on drinking water and wastewater facilities throughout the country by region, including the Midwest and Great Plains, such as droughts expected to reduce groundwater recharge rates and floods likely to result in service disruption, damaged infrastructure, and higher treatment costs. How do the costs of managing these risks affect water utilities’ ability to comply with the Safe Drinking Water Act?

Response: EPA’s recent estimated funding needs for drinking water and wastewater systems are 20-year estimates of costs expected to be necessary for water systems to maintain current levels of service and comply with current regulatory mandates. The estimates do not take into account additional costs that water and wastewater systems may encounter as they take on additional projects to build resilience to extreme weather or changing hydrological conditions. As increasing numbers of water systems encounter these additional costs in the coming years – and if federal assistance is not provided – then utilities will have to pay for them either by increasing customer rates or delaying other infrastructure investments, including some that help assure compliance with the Safe Drinking Water Act.

13. The GAO report provides examples of impacts on water infrastructure resulting from recent extreme weather events, which we know are increasing in frequency and intensity due to climate change. For example, flooding from Hurricane Harvey in 2017 submerged 18 of Houston’s 39 wastewater treatment facilities rendering them inoperable during and in the immediate aftermath of the storm. In Harris County, where Houston is located, over 23 million gallons of untreated wastewater were released from treatment facilities into surrounding water bodies as a result of flooding from Hurricane Harvey. Are there major drinking water infrastructure facilities at an enhanced risk from storms, flooding, changes in precipitation patterns, salt intrusion, or other climate-related impacts that are ineligible for funding under the discussion draft?

Response: Under the discussion draft, drinking water systems that serve communities of more than 100,000 people would not be eligible for funding through any resilience and sustainability program at EPA. EPA reports that there are 441 community water systems in the U.S. that serve more than 100,000 people. This means that the largest drinking water systems across the country, and which face varied threats such as prolonged drought, saltwater intrusion into drinking water sources, or more frequent intense storms and floods, will not even have a chance to

compete for a share of EPA resilience and sustainability funding. For example, the City of Baltimore’s Climate Action Plan identifies a water conservation goal of “minimizing leakage and water loss through conveyance.” This is the type of water efficiency project that could potentially benefit from the Drinking Water System Resilience and Sustainability Program, but Baltimore would not be eligible to access this funding because it serves a community of more than 100,000 people.

14. Your written comments point out “Unfortunately, the water system resilience proposals incorporated into AWIA 2020 and DWIA 2020 would triple the number of EPA programs aimed at addressing this topic, while not resolving the issue of eligibility for hundreds of community water systems that provide water to nearly half of the nation’s population.” (AMWA comments, pp. 4-5). How do climate adaptation costs affect rates for customers served by large utilities? Do large utilities have other sources of financial support?

Response: Climate adaptation costs affect rates for customers served by large utilities in the same way as they affect customers served by small or midsize utilities. In each case, costs necessary to adapt or construct infrastructure resilient to these emerging threats will be in addition to costs utilities have already forecasted to maintain current service and regulatory compliance levels. Without assistance, large utilities will finance these costs through traditional mechanisms like bond sales that are ultimately paid for through customer rates. In some cases, large systems may have to defer otherwise planned projects to pay for newly necessary infrastructure and resilience projects.

15. Given the drastic decline in revenues due to the ongoing novel coronavirus (COVID-19) pandemic that AMWA describes in its written comments, and the increasing costs of climate change-related impacts, how will large municipal utilities adjust their operations?

Response: In the near term, many large public drinking water systems are responding to the COVID-19 pandemic by placing moratoriums on water service disconnections related to nonpayment of bills and waiving late payment fees. But these actions come at a cost and will contribute to the nearly \$14 billion in annualized revenue losses the nation’s drinking water systems are expected to suffer due to the pandemic. In the longer term, some utilities may also defer planned water rate increases or put off planned capital projects. These changes could potentially lead to delays of projects currently planned to increase water infrastructure resilience, thereby making them more expensive once the utility is once again in a position to finance them.

16. Your written comments support reauthorization of the Clean Water State Revolving Fund (SRF) program in section 2015, but “view it as a missed opportunity that the bills fail to similarly propose to reauthorize funding for the Drinking Water SRF. That program was reauthorized in the 2018 AWIA law but expires after the 2021 fiscal year.” What are

some advantages of the certainty of extending the authorization of the Drinking Water State Revolving Fund (DWSRF) before it expires in FY21?

Response: America’s Water Infrastructure Act of 2018 reauthorized the Drinking Water SRF for the first time in that program’s history. Formally reauthorizing the program demonstrated Congress’ commitment to continuing to provide low-cost financing for drinking water projects that benefit public health, and offered appropriators guidance as to how they should approach program funding. In fact, the FY19 and FY20 fiscal years – the first two fiscal years covered by the DWSRF’s three-year reauthorization in AWIA 2018 – the DWSRF received near-record-high appropriations. Not including a DWSRF reauthorization in the Drinking Water Infrastructure Act of 2020 and allowing the program to expire after the 2021 fiscal year sends the wrong message about the importance of drinking water investment and threatens to retreat on the progress Congress has made in funding the program over the past few years.

17. To what extent will utilities administered by states, localities, and special districts be able to generate additional revenues in the absence of increased funding from the DWSRF?

Response: Without increased funding assistance from the DWSRF, water systems will rely more on municipal bond sales to finance necessary infrastructure projects. Bond sales are effective funding sources, but interest paid by water systems on the bonds are generally higher than interest rates that accompany DWSRF loans. This means that a higher proportion of revenues collected from local water bills will have to go toward paying financing costs.

Senator Duckworth:

18. I believe that eliminating lead in drinking water from schools and childcare facilities is an important National priority that will lead to public health benefits for millions of families.

Can you please describe how the changes made in Section 11 of the *Drinking Water Infrastructure Act of 2020* will enable schools to eliminate lead exposure from drinking water for children?

Response: Section 11 would amend EPA’s Voluntary School and Childcare Lead Testing Grant Program to make public water systems eligible to receive grants to conduct lead testing in schools. This is an important expansion of the current grant program, as water systems that offer their assistance in testing school water have not been directly eligible to obtain grants intended to offset these testing costs. Section 11 would also extend the program’s authorization for one year.

19. As you know, millions of Americans have been asked to shelter at home as our Nation grapples with the challenges associated with COVID-19. In order to shelter safely, Congress must ensure that utilities, like your members, have the resources they need to ensure there are no utility shuts offs and that previous disconnections are restored.

How do the financial resources made available in the *Drinking Water Infrastructure Act of 2020* and the *America's Water Infrastructure Act of 2020* compare to the scale of need felt by your members working to secure utility services for their customers?

Response: The two bills do not directly address water system or individual customer needs arising out of the COVID-19 pandemic. AMWA's statement reported that AMWA and the American Water Works Association have estimated that the pandemic and the shutdown of the economy could cost the nation's drinking water systems nearly \$14 billion in lost revenues over one year, with nearly \$5 billion of this sum representing losses from increased customer delinquencies, and more than \$500 million resulting from utilities' decisions to halt water service shutoffs for nonpayment during the public health emergency. So it is clear that the cost of the pandemic to utilities will be immense. AMWA is encouraged that Section 10 of the *Drinking Water Infrastructure Act* would require EPA to study and report on the prevalence of households in the U.S. that do not enjoy affordable drinking water service. AMWA hopes this study might represent the first step toward the creation of a national water bill assistance program to benefit low-income households.

Senator Gillibrand:

20. Ms. VanDe Hei, the prevalence of PFAS in drinking water systems in New York and across the country poses a significant challenge for communities. What additional federal resources would help water utilities ramp up more testing and remediation to address PFAS contamination?

Response: Drinking water systems primary focus testing and remediation efforts on the approximately 90 contaminants for which EPA has set binding regulations, as well as any other contaminants that may be subject to state-level regulation. Drinking water systems also screen for the presence of certain unregulated contaminants identified by EPA under the Unregulated Contaminant Monitoring Rule. Section 4 of the *Drinking Water Infrastructure Act* proposes to increase authorized funding from \$100 million annually to \$300 million annually for a grant program that will offer grants to help community water systems address emerging contaminants with a focus on PFAS. These funds, if appropriated, could bolster local-level PFAS testing and remediation efforts.

21. In your testimony, you specifically mentioned the new discretionary grant programs for wastewater and drinking water as proposed in Section 2016 of AWIA 2020 and Section 14 of DWIA 2020. How could more grant flexible grant programs, such as the programs I just mentioned, help municipal water systems that are experiencing significant drops in revenue as a result of the COVID-19 pandemic?

Response: AMWA and the American Water Works Association have estimated that the pandemic and the shutdown of the economy could cost the nation's drinking water systems nearly \$14 billion in lost revenues over one year. Assistance to help

individual systems offset these losses is badly needed, but at present there is not a federal program designed to quickly deliver this type of aid to community water systems. If designed correctly, the new discretionary drinking water and wastewater grant programs could potentially serve as a mechanism to quickly deliver funding assistance to drinking water systems in times of a national emergency.

Senator Markey:

22. The draft text of the *Drinking Water Infrastructure Act of 2020* takes important steps to provide funding and support for water system sustainability and resilience.

- a. What further additions or changes to these programs would the Association of Metropolitan Water Agencies recommend to ensure that water systems like those serving Boston, Springfield, Worcester, Lowell, Cambridge and other places in Massachusetts could also benefit from these resources?

Response: As drafted, America’s Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020 would authorize or reauthorize three different EPA water system infrastructure resilience and sustainability programs at a total of \$80 million over four years. All sizes of community water systems and publicly owned treatment works would be clearly eligible to access one of these programs, with the exception of community water systems serving more than 100,000 people – systems serving communities like Boston, Springfield, Worcester, Lowell, and Cambridge. To ensure these larger community water systems can also benefit from the program, AMWA recommends combining the existing Drinking Water System Infrastructure Resilience and Sustainability Program (in section 1459A(l) of the Safe Drinking Water Act) with the Midsize Drinking Water Infrastructure Resilience and Sustainability Program proposed in Section 9 of the Drinking Water Infrastructure Act. The combined program should be open to community water systems of all sizes, but could reserve a portion of annual funding for small or disadvantaged community water systems, just as provided for currently in EPA’s Drinking Water SRF and WIFIA programs. This would protect the interests of small systems while providing all of the nation’s community water systems with a fair chance to compete for funding assistance.

Senator Whitehouse:

23. How would infrastructure improvements for reducing and removing plastic waste and post-consumer materials, including microplastics and microfibers, improve the nation’s wastewater and drinking water systems?

Response: Microplastics and microfibers are an issue of emerging concern for the nation’s water and wastewater systems. While the presence of microplastics in drinking water is not regulated at the federal level, some states like California are taking steps toward requiring testing for microplastics in drinking water. Should

EPA or any state in the future promulgate a regulation on the level of microplastics in drinking water, infrastructure improvements to ensure removal of the substances would be critical to attaining water system compliance.