



**TESTIMONY OF STEVEN LEVY  
EXECUTIVE DIRECTOR, MAINE RURAL WATER ASSOCIATION  
ON BEHALF OF THE  
NATIONAL RURAL WATER ASSOCIATION  
REGARDING THE  
“THE ASSISTANCE, QUALITY, AND AFFORDABILITY ACT OF 2010”  
MAY 13, 2010**

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**National Rural Water Association**

*“Grassroots Environmental Protection in Rural and Small Communities”*

The country’s largest community based environmental association, representing over 24,000 small and rural communities’ water supplies.

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Good morning Mr. Chairman and Committee Members – and thank you for the opportunity to testify today on behalf of small and rural communities on this important public health issue.

As you know, when it comes to providing safe water and compliance with federal standards, small and rural communities have a difficult time due to their limited customer base. This is compounded by the fact that small and rural communities often have lower median household incomes and higher water rates compared to larger communities. As a result the cost of compliance is often dramatically higher per household. However, the vast majority of U.S. water supplies are small, 92 percent of the country’s 52,000 community water supplies serve less than 10,000 persons.

I am Steven Levy, the Executive Director of the Maine Rural Water Association and the Atlantic States Rural Water Associations in Connecticut and Rhode Island. I am familiar with the financing programs in these three states. I work directly with small and rural communities’ water infrastructure funding – securing about 20 million dollars a year for specific communities over the past 30 years. I am here today representing over 24,000 community members in the National Rural Water Association.

We would like to thank the committee for the important new policy directions in the “Assistance, Quality, and Affordability Act of 2010,” your SRF reauthorization bill that, if enacted, will improve the current program.

The proposed bill increases the role of technical assistance in the nation’s drinking water safety program. Rural and small communities want to ensure quality drinking water and wastewater. After all, local water supplies are operated by people who are locally elected and whose families drink the water every day. However, they need common-sense technical assistance in a form they can understand. Many small communities rely on volunteers or part-time administration to operate their local water supplies. The bill’s reliance and reorganization of technical assistance should allow small communities to have access to technical resources needed to operate and maintain water infrastructure, comply with standards in the most economical way, and obtain assistance in applying for state revolving loan funds.

With a significant turnover in water operators and board members, and the ever-increasing regulatory burden, the need for training and technical assistance remains constant. A typical on-site contact could include ensuring the water service is protected from terrorism, discovering and repairing a faulty gas chlorination system, assisting a community remove and replace the filtration media, training a new operator to run that particular treatment system, finding engineering and construction errors in a new sewer system, implementing a non-point pollution prevention plan, solving lead and copper rule problems, or completing all the paperwork for funding programs including the SRFs . Often the assistance saves thousands of dollars for the community and keeps the systems in long-term compliance with EPA rules.

The NRWA technical assistance effort is truly unique in the federal system to protect public health because it accomplishes progressive environmental protection with the support of the local community. Having local community support for environmental protection is essential to its long-term success. Without these initiatives effective implementation of the Safe Drinking Water Act and Clean Water Act in our rural areas would be nearly impossible. The need for rural water assistance continues to increase with the expansion of federal water regulations including arsenic, radon, operator certification requirements, disinfection by-products, and the ground water treatment rule - in addition to the over 80 EPA rules that are currently on the books.

The bill includes new and innovative provisions for solving two of the most pressing and intractable issues in the current drinking water program; affordability of the rules on disadvantaged communities and ensuring SRF funding is targeted toward the most needy communities.

Communities exhibiting the greatest need should receive funding first. A significant portion of the funding should flow toward small systems because, generally, they need it more. Rates are often much higher per household in small communities – often from compliance requirements. It only makes sense that federally subsidized funding would flow toward the communities with the greatest need. Commonly, the most needy communities will not have the ability to pay back a loan – even with very low interest rates – and require some portion of grant (or principle forgiveness) funding to make a project affordable for the ratepayers.

The proposed bill retains the key elements that ensure targeting of funding to the most needy communities including:

- A minimum set-aside for small systems.
- A disadvantaged community subsidy.
- Requirements to prioritize funding address the most serious risk to human health; to ensure compliance; and assist systems most in need on a per household basis.

The 1996 Act grants states considerable discretion in the operation of their revolving loan funds with regard to providing principal forgiveness, in defining disadvantaged communities, and in targeting funds to the most needy communities. As a result, there is great variety in programs, with some states providing no forgiveness, with other states targeting significant resources to needy systems.

The proposed bill recognizes small system funding constraints in newly drafted provisions contained in **Priority and Weight of Applications (Section 7)** and **Disadvantaged Communities (Section 8)**.

The new **Priority and Weight of Applications** section includes a new process for states to consider affordability of new standards related to SRF funding by “*evaluating whether capital improvements required to meet the new standard are affordable for disadvantaged communities... [and] If the state finds that such capital improvement do not meet affordability criteria for disadvantaged communities, the state’s IUP shall provide that priority use of funds... by giving priority to systems affected by the standards and serving disadvantaged communities.*” Please consider applying this provision to all standards not just new standards because many current standards are resulting in affordability problems that this provision could assist (arsenic, disinfection by-products, ground water rule, SWTR, lead/copper, etc). The new **Disadvantaged Communities** section targets SRF funding to the systems identified in the new IUP approach. We support these new and innovated ideas/provisions and believe they would be helpful in ensuring the intent of the SRF is accomplished.

We urge the Committee to reconsider a provision in Section 8, regarding the proposal to allow funding a “portion” of a system under the “disadvantaged” provision of the SRF. This fundamentally changes the current relationship between a primary agency of the EPA, and the regulated water systems as a whole. This proposal could serve as a disincentive for water systems to view their systems as a whole, and may in fact generate reverse “cherry picking” for infrastructure replacement. It could also complicate loan/forgiveness relationships with SRFs given that these could be multiple deals within one loan. Finally, the current Community Development Block Program under HUD already has the expertise and funding to target infrastructure dollars to needy portions of larger communities.

It is already more difficult for small communities to access SRF funds than large communities, this provision would likely compound this problem – and large communities’ economies of scale put them in a much better position to access the low-interest loans available from the SRFs to provide assistance to the disadvantage portions of their communities and still remain financially viable.

Finally, please consider including an Etheridge bill (HR 2006) type provision to attempt to direct technical assistance funding to be most beneficial to small communities. As currently written, the bill would retain the current process where EPA chooses not to fund the most effective and beneficial drinking water safety assistance initiatives for small communities – but, instead, fund other EPA priorities. Representative Etheridge’s bill requires EPA to weigh what small communities believe is most beneficial when making decisions on providing assistance to them – this only seems meritorious in making assistance the most beneficial.

Thank you Mr. Chairman and Members of the Committee for your assistance, and the opportunity to testify today – and I look forward to answering any questions.

## **Initial Comments (5/9/2010) – Mike Keegan, Analyst**

### **Section 2: Technical Assistance**

Reauthorizes current technical assistance authorization without significant changes. Increases authorization from \$15 million to \$20 million. Does not include Etheridge bill (HR 2006) type provision to attempt to allow technical assistance funding to be provided in the manner most beneficial to small communities. As currently written, the bill would retain the current process where EPA chooses not to fund the most effective and beneficial drinking water safety assistance initiatives in small communities – but, instead, fund other EPA priorities. Also, we are concerned that the earmarking provision in this section may result in Congress limiting its authority to direct technical assistance funding that is the most effective within their Districts if the Congress determines that EPA is not funding the preferred initiatives. Under the FY2007 Continuing Resolution, EPA utilized their one-year discretion to choose not to continue funding for the existing technical assistance initiatives that had been prioritized by Congress.

### **Section 3: Prevailing Wages**

The recent Davis-Bacon requirements are diminishing the advantages that subsidized interest rates provided to SRF borrowers. Currently, some SRF projects are rejecting the SRF and issuing bonds as these borrowers prefer not to comply with prevailing wage requirements. Prevailing wage requirement increases the cost of projects and decreases the amount available for construction and providing public health and environmental projects/services at lowest cost. Recognizing there is a (greater) public welfare benefit to prevailing wage requirements, we do not take a position on the issue, and recognizing the funding is from the federal government with federal objectives, we defer to Congress on merit of including the requirement in the SRF.

### **Section 4: Use of Funds**

Expands use of funds to be eligible for planning, designing, pre-construction, aging infrastructure, capturing sustainable energy, etc. – in addition to compliance expenditures. This does not seem to be a dramatic change in use of funds as many of these expenditures have been funded in the past – and the new expenditures would still be awarded based on need. Allows states greater flexible on use of SRFs for financing state GO bonds. This could serve as a disincentive for increased use of the grant authorities in the SRF; however, it will be at the discretion of the states.

### **Section 5: Data on Variances, etc.**

Requires that states report additional information in the process of developing their intended use plans such as systems with variances, exemptions, and “persistence” violations. These systems, ostensibly, should be the priority for funding for SRF funding (and perhaps have not been), and this disclosure can only help direct the SRF funding toward its enumerated/meritorious priorities.

### **Section 6: Assistance for Restructuring**

Expands or clarifies the definition of restructuring under the act. It does not provide any additional authorities to the federal governmental to require restructuring. The new definition only clarifies what is commonly understood to mean restructuring.

### **Section 7: Priority and Weight of Applications**

Expands the criteria/priority for awarding SRF beyond the current three priorities (risk health, compliance, and most in need) to include affordability compliance in the future. This new criterion seems ambiguous and subjective compared to the current criteria – however, it doesn't appear to

significantly redirect the current priorities for funding. Also this section includes a new process for states to consider affordability of new standards related to SRF funding by “evaluating whether capital improvements required to meet the new standard are affordable for disadvantaged communities... If the state finds that such capital improvement do not meet affordability criteria for disadvantaged communities, the state’s IUP shall provide that priority use of funds... by giving priority to systems affected by the standards and serving disadvantaged communities. This new provision would be helpful and should be applied to all standards not just new standards because many current standards are resulting in affordability problems that this provision could assist (arsenic, disinfection by-products, ground water rule, SWTR, lead/copper, etc). This subsection also includes a new series of reporting requirements/topics (what are commonly referred to as sustainability elements) for SRF applicants. This new provision seems redundant to current limitations in the current SRF: *“Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that— (i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or (ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.”*

The new reporting could overwhelm many smaller communities’ (and the most worthy) ability to apply for funding – as is the case now with some states capacity development reporting criteria. This potential problem would be ameliorated by mentioning in the bill that the reporting should be scaled to various system sizes and by ensuring technical assistance is available to small communities to assist with the funding process.

### **Section 8: Disadvantaged Communities**

It is unclear where this new 4 percent provision is in the current law and its intent. It seems that all (100 percent) of the states’ grant should be used to target the systems identified in the new IUP process because they are the most needy and economically disadvantaged. Regarding the new provision to allow for the funding of a “portion” of a water system under the SRF, this fundamentally changes the current federal program/relationship of requiring compliance from the regulated water system, as a whole organization, and providing funding to the community as a whole. It will serve as a disincentive for a community to function as a holistic social/public welfare institution and encouraging civic responsibility for the welfare of the entire community water supply. Also it could lead to a moral hazard where the wealthier portion of the community has an interest in sequestering funds from lower-income portions of the community because (under this proposal) the lower-income portions of the community could apply for subsidized federal funding – that much of which was contributed from communities, as a whole, are less affluent than the community receiving the subsidy. Also it would seem de facto that every community that would apply for this funding could otherwise afford to pay for the project with an SRF loan (or else they would qualify as a disadvantaged community under the status quo). Federal funding programs designed to assist with SDWA should retain the emphasis on providing funds to the entity they regulate (i.e. community water systems). This retains the traditional federal/state/local governing structure. Local governments should be encouraged to be responsible for being the primary source for the entire community welfare. Currently, the Community Development Block Grant program makes such grants, and is a more appropriate agency to administer this type of funding because of its economic development expertise and non-regulatory mission. It is already more difficult for small communities to access SRF funds than large communities, this provision would like compound this problem. And large communities’ economies of scale put them in a much better

position to access the low-interest loans available from the SRFs to provide assistance to the disadvantaged portions of their communities and still remain financially viable.

**Section 9: Administration of State Loan Funds**

Allows states a larger set-aside to administer their SRF funds. The main set-aside in the SRF that is achieving compliance, improving water quality, and providing communities assistance to access SRF assistance in the vast majority of water supplies is the 2 percent technical assistance in the SRF. This set-aside provision should be raised to 4 percent. The use of the set-aside is up to the discretion of the state (and it is not mandatory).

**Section 10: Authorization of Appropriations**

Increase the annual authorization of appropriations

**Section 11: Negotiation of Contracts**

Applies only to large communities

**Section 12: Authorization of Appropriations**

Requires the EPA to continually revise list of affordability technologies for small communities. Allows EPA to re-direct additional “pooled” SRF funds to states with greater compliance affordability burdens.

**Section 13: Authorization of Appropriations**

Changes standard setting provision from “taking cost into consideration” to include taking lifecycle costs, maintenance, replacement, and avoided costs into consideration. Unclear how this would affect the standing setting section. However, it does not appear problematic on its face.

**Section 14: Enforcement**

Provides EPA with new authority to develop regulations for conducting inspections of systems in violation or post violation. Content, frequency, or degree of inspection not clarified. Problematic because EPA has shown inability to assess or advise systems on operations or even compliance assistance. Unclear what EPA would be inspecting or what enforcement action could be taken in a system in compliance. Inspections are limited to violations and EPA is to consider the severity and frequency of violations in conducting inspections. Perhaps the self-assessment under the recent TCR rule revisions could be looked at as a model for this policy objective? It appears that the inspections would be conducted by state agencies, however, this needs to be verified.

**Section 15: Reducing Lead in Drinking Water**