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— NEW YORK STATE —
ASSOCIATION OF COUNTIES

The County Perspective on

Water Infrastructure Funding Reform

Testimony submitted by the

**New York State Association of Counties (NYSAC),
NYS Association of County Health Officials (NYSACHO), &
Conference of Environmental Health Directors (CEHD)**

to

Senator Michelle Hinchey

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**Hon. Martha
Sauerbrey,**
NYSAC President

Stephen J. Acquario,
NYSAC Executive Director

Dr. Indu Gupta,
NYSACHO President

Sarah Ravenhall,
NYSACHO Executive
Director

Isaiah Sutton,
CEHD Chair

Introduction

Senator Hinchey, thank you for the invitation to participate in this legislative forum on water infrastructure funding reform. We appreciate the opportunity to share ideas and insights on how best to change the way New York State funds water infrastructure projects. In the testimony that follows, we will describe the role local health departments (LHDs) play in ensuring access to clean water and elaborate on the top county priorities for water infrastructure funding reform, including:

1. Increase Article 6 base grants and state aid to LHDs;
2. Increase drinking water enhancement grants to LHDs;
3. Ensure small systems receive funding;
4. Include privately-owned public water supplies (PWSs) in funding opportunities;
5. Fund the replacement of customer-owned portions of lead service lines; and
6. Fund the replacement of combined sewer systems.

Background on the Roles and Responsibilities of LHDs and PWSs

Before state lawmakers begin to reform the way New York State funds water infrastructure projects, it is crucial to understand the relative roles and responsibilities of counties, municipalities, and water districts as they exist under our current framework. The following section details how these entities work together to ensure New Yorkers have access to clean water.

The Role of Local Health Departments

To understand the role of local health departments in protecting our drinking water supply, it is helpful to first understand how environmental health services are provided across the state. While there are 58 LHDs in New York State (New York City and the 57 counties outside of New York City), only 36 counties and the City of New York provide environmental health services in their communities. These LHDs are designated as full-service local health departments, meaning that they provide all core public health services required under Article Six of the Public Health Law. Twenty-one rural local health departments are considered partial-service counties, where the environmental health services are provided by the New York State Department of Health (NYSDOH) through state district and regional offices.

Full-service LHDs and NYSDOH district and regional offices are not directly responsible for the operation and maintenance of public drinking water systems. Rather, they conduct oversight and monitoring activities and provide technical assistance to assure that public water supply operations achieve and maintain compliance with all state and federal laws and regulations. Activities include carrying out sanitary surveys, providing notice and reminders to public water supply operators regarding testing and reporting requirements, preparing annual sampling schedules through New York's Safe Drinking Water Information System (SDWIS), and monitoring to assure that testing is performed at the appropriate times throughout the year. When a public hazard exists, the full-service LHDs ensure that the public is

appropriately notified through such mechanisms as the issuance of Boil Water Notices. If necessary, those LHDs, or the relevant NYSDOH offices in the case of partial-service counties, also take enforcement actions for systems that fail to comply with Sanitary Code requirements.

Full-service LHDs enter testing data into SDWIS to allow both NYSDOH and the federal Environmental Protection Agency (EPA) to track compliance. Those LHDs also must ensure that operators meet certification criteria for Certified Water System Operators. Violations of Part 5 of the State Sanitary Code may lead to enforcement actions, including notices of violation, consent orders, administrative orders, Attorney General referral, and EPA referral; however, the need to impose penalties occurs rarely and only after exhausting education and other opportunities to coordinate the necessary response. Full-service LHDs can also conduct surveillance sampling of a public water system if routine sampling is neglected, in response to complaints, or when conditions are observed that may pose a risk to the drinking water system.

The Role of Public Water Systems

Public water systems (PWSs) have primary responsibility for the daily operation, maintenance, and monitoring of the drinking water they provide to the communities they serve. PWSs in New York State generally fall into two categories:

1. Community water systems, which can operate under the auspices of municipal governments (typically cities, towns, villages, or water districts) or be privately owned (such as those operated by mobile home parks, apartment complexes, and homeowners' associations).
2. Non-community public water systems, which are sub-categorized as transient if they operate for more than six months a year but serve different people (e.g. rest areas, parks, convenience stores, and restaurants) or non-transient if they operate for more than six months a year but a specific group of people (e.g. schools, hospitals, and factories).

Regardless of their designation, all public water systems in New York State must meet the requirements of the 1974 Safe Drinking Water Act, through which the EPA sets maximum contaminant levels (MCLs) designed to assure that water is safe for human consumption. Public water systems must also meet the requirements of the New York State Sanitary Code NYCRR Part 5 and Subpart 5-1, which specify monitoring and sampling requirements for drinking water, including source water and treated and distributed water. Finally, PWSs must provide annual water quality reports to the consumers they serve, as well as notify the public when there is a violation that may pose a human health risk.

County Priorities for Water Infrastructure Funding Reform

As part of any reforms to water infrastructure funding, counties respectfully request that the Governor and state lawmakers increase state aid to LHDs to ensure counties have sufficient funding to perform important oversight and monitoring activities, as well as provide technical assistance to municipalities and homeowners that make the system improvements afforded by new funding opportunities. We also wish to ensure that small systems and private PWSs receive funding, that funds be made available to replace customer-owned portions of lead service replacement lines, and that funds be made available to update and replace the combined sewer systems. The following subsections elaborate on these requests.

Increase Article 6 Base Grants and State Aid to LHDs

Local health departments face ongoing resource limitations that undermine their capacity to respond to threats to our drinking water. The 2% New York State property tax cap constrains local government budgets. When coupled with stagnant state funding and new public health threats like the COVID-19 pandemic, the result is that LHDs too often struggle to maintain current programs, much less enhance their ability to respond to the growing challenges of providing safe water for drinking and recreation. Extraordinary events, such as those faced in Hoosick Falls, stretch LHD resources and threaten to erode our already limited capacity to maintain other critical public health services.

Too often, at both the federal and state levels, when a new public health threat emerges (e.g. a new drinking water contaminant), there is a scramble to identify emergency funding for response. While emergency funding is helpful, it does not address the long-term need for sufficient and stable funding to maintain a high-quality public health infrastructure, as well as a workforce that is ready and trained to respond to new threats as they emerge. It is imperative that state lawmakers recognize the negative impact the last several years of funding constraints have had on both the local and state public health workforce and work to maintain and enhance the capacity of our public health infrastructure. To this end, counties urge state lawmakers to provide the following increases to the reimbursement LHDs receive for providing core public health services under Article 6 of the Public Health Law:

- Increase base grants to \$750,000 or \$1.30 per capita in full-service counties;
- Increase base grants to \$577,500 in partial-service counties;
- Restore New York City to 36% reimbursement beyond the base grant; and
- Permit fringe benefits to be an eligible expense under Article 6 state aid and reimburse fringe at 36% in all counties.

Increase Drinking Water Enhancement Grants

While New York State has made significant fiscal and programmatic enhancements to assist municipalities in protecting drinking water, the same cannot be said for support of the county role of monitoring and regulating drinking water supplies. In addition to

the resource limitations described above, Drinking Water Enhancement Grant funding for LHDs has remained stagnant despite growing public health needs and mandates. The original SFY 2007-08 appropriation for Drinking Water Enhancement Grants was \$6 million; however, between SFY 2009-2010 and SFY 2013-14, grants were cut by a cumulative 16% and have remained flat since SFY 2013-14.

New York State's fiscal commitment to protecting our drinking water must include support for public health's vital monitoring and regulatory role. Counties urge state lawmakers to double the Drinking Water Enhancement Grant from \$5 million to \$10 million to improve existing drinking water monitoring systems and ensure the continued safety of drinking water for all New Yorkers.

Ensure Small Systems Receive Funding

It is imperative that water infrastructure improvement funding be used to provide relief to small systems. Presently, many funding opportunities are out of reach of small and often financially restricted supplies, as they benefit only larger systems that have grant writers or systems that have gone into non-compliance.

When small systems invest in water upgrades without state assistance, they are forced to raise water rates to high levels because they do not have a large customer base to spread out the cost. To protect taxpayers from rate increases, greater assistance should be provided to the small systems that are struggling but not yet non-compliant or in a state of emergency. We recommend that the Safe Water and Infrastructure Action Program (SWAP) proposed by Senator Hinchey in S.3968A include a funding floor based on population to ensure all systems receive necessary water infrastructure funding.

Additionally, small systems and mobile home parks, in particular, often have difficulty addressing MCL violations related to arsenic, PFOA, PFOS, 1,4 dioxane, and other emerging contaminants because of funding limitations. The Clean Water Infrastructure Act fails to address operating and maintenance costs that can become prohibitive for small systems. In reforming state funding opportunities, lawmakers and state agencies should consider easing hardship requirements, offering additional grants, and increasing the length of loans to provide for lower payments.

Include Privately-Owned PWSs in Funding Opportunities

Both the Clean Water Infrastructure Act and the proposed Safe Water and Infrastructure Action Program (SWAP) make funding available to only municipal water systems. This precludes use of public funds to support improvements to some PWSs regulated by the Public Service Commission (PSC). These regulated PWSs supply water to large numbers of New York residents whose tax payments fund these state drinking water infrastructure investments. For example, approximately 90% are

Rockland County's 330,000 residents are served by Suez Water New York, a regulated, privately-owned PWS. Any needed infrastructure improvements must currently be funded wholly by their customers through PSC-approved water rates. Since these Suez Water New York customers are also state and federal taxpayers, state funding should be available for consideration to offset the cost of necessary infrastructure improvements. Counties support calling on PSC to ensure that funds go directly to offset customer rates and not to company profits.

Fund the Replacement of Customer-Owned Portions of Lead Service Lines

It is important that future state investments in drinking water infrastructure address new federal requirements related to lead service lines (LSLs). Lead enters our drinking water mainly from the corrosion of plumbing materials containing lead, which was widely used in plumbing materials until Congress imposed restrictions on the percent of lead in pipe and pipe fittings and fixtures in 1986. Today, there are an estimated 6.3 to 9.3 million homes served by LSLs in thousands of communities nationwide.¹

The EPA's Lead and Copper Rule (LCR) has dramatically improved public health by significantly reducing the number of drinking water exposures across the country. The EPA's most recent LCR revisions, which will go into effect in 2022, are necessary to strengthen public health protections but will result in significant new costs to local water systems and homeowners. New York State should follow the lead of other states that are allowing water systems to use state funds to replace customer-owned portions of LSLs when they implement LSL replacement programs under the new LCR. This is necessary to ensure the replacement of the entire LSL at homes where residents may be unable or unwilling to finance the replacement on their own.

Fund the Replacement of Combined Sewer Systems

New York State must also prioritize upgrading and replacing combined sewer systems (CSSs) as part of future water infrastructure funding programs. CSSs are sewer systems that convey both sanitary sewage and stormwater through a single pipe. When the capacity of CSSs is exceeded during periods of heavy rainfall, untreated combined sewage and stormwater can back up into basements and overflow from manholes onto streets. Combined sewer overflows (CSOs) may also pollute waterbodies with untreated domestic, industrial, and commercial wastes, as well as stormwater runoff. This has negative effects on the environmental health of the receiving waterbody and its ecosystem, potentially contributing to the growth of Harmful Algal Blooms (HABs) and raising treatment costs for drinking water.

¹ <https://www.federalregister.gov/documents/2021/01/15/2020-28691/national-primary-drinking-water-regulations-lead-and-copper-rule-revisions>

A 2018 study by the Office of the State Comptroller (OSC) found that there are 46 CSS communities in New York State.² As CSSs are some of the largest and oldest sewer systems in the state, municipalities often find the cost of updating these systems to be prohibitive. In 2012, the EPA estimated that CSS corrections would cost New Yorkers \$5.1 billion over 20 years, in addition to the \$26.3 billion needed for other wastewater infrastructure improvements.³ Significant state investment is needed to retrofit sections of sewer and treatment infrastructure, conduct basic repairs, and apply green infrastructure techniques to slow the movement of stormwater in order to prevent overflows. Counties urge the Governor and state lawmakers to devote state resources to CSS retrofits in future water infrastructure packages.

Conclusion

Thank you for your consideration of these recommendations related to water infrastructure funding reform. Counties strongly support providing additional state funding to local health departments to help fulfill our shared mission to protect public health and ensure the safety of our drinking water. In addition, state investments are needed in small and privately-owned systems, lead service line replacement, and combined sewer system retrofits. We look forward to working with you and your colleagues in the State Legislature on funding reforms that will support the modernization of our water infrastructure and protect residents from the harms of drinking water contamination.

² <https://www.osc.state.ny.us/files/local-government/publications/pdf/combined-sewers.pdf>

³ <https://www.osc.state.ny.us/files/local-government/publications/pdf/combined-sewers.pdf>