September 19, 2023

Via email

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Richard Revesz
Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget
Washington, D.C. 20503
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Re: Safe Drinking Water Act Lead and Copper Rule Improvements; Water Affordability

Dear Assistant Administrator Fox and Administrator Revesz,

The undersigned 79 organizations strongly support the Environmental Protection Agency's and the Biden Administration's commitment to further revising the Lead and Copper Rule (LCR) through the LCR Improvements process. Above all, EPA must adopt a strong, transformative rule that protects public health. To do so, we urge changes to the existing rule that will, among other important steps, require the full replacement of all lead service lines at water utility expense within a decade, fix compliance sampling to ensure that water is tested from the service line as well as the first draw from the tap, substantially reduce the lead action level to 5 parts per billion or lower, and prioritize lead service line replacement to reduce lead levels in historically underserved communities.

In this letter, we write specifically to urge you to resist calls from water utilities to water down the forthcoming proposed rule based on concerns over water affordability. We are steadfast advocates for universal, *affordable* access to *safe* drinking water. EPA must not accept the false premise that drinking water can be *either* safe from toxic lead *or* affordable, but that it cannot be both. It can and must be both. And EPA must show the way. We offer recommendations here on how to do so.

In sum, opponents of a strong LCR overstate both the likely compliance costs and the significance of those costs relative to the overall scale of necessary investments in water infrastructure. Meanwhile, they overlook strategies they can use—in collaboration with EPA and the states—to ensure affordable access to safe water.

Critically, as described below, utilities should be expected to maximize the use of available federal water infrastructure funds and other non-ratepayer sources of funds for lead service line replacement (LSLR). Because many communities have spent decades paying for contaminated water, it is of the utmost importance that water utilities prioritize accessing those non-ratepayer

funds before asking those same families to spend more money to fix a problem they did not ask for. Where last-resort rate increases are demonstrated to be necessary, utilities should adopt strategies—including many EPA has specifically recommended—that can increase total rate revenues *without burdening low-income customers*.

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A strong LCR that requires full replacement of lead service lines at the utility's expense and takes the other key steps recommended above will align with the Biden Administration's commitment to advance environmental justice. Communities of color and low-income communities have historically faced disproportionate exposure to pollution and cumulative adverse health effects from multiple co-occurring toxics, including lead. Published research has found that communities with higher populations of people of color are disproportionately impacted by lead and by drinking water contamination. And President Biden has committed to a goal of replacing all lead service lines within 10 years.

Yet, many water utilities and water utility associations have opposed a mandate to replace all lead service lines based on the cost of compliance, which they say may make water bills unaffordable, especially for low-income customers. The unavoidable implication is that millions of people should resign themselves to drinking unsafe water if low-income residents in their community cannot afford to pay higher water bills. Ironically, many people at risk of lead in their drinking water are the same people who would supposedly be "protected" from unaffordable water bills, if lead pipes are allowed to remain in use. In reality, this approach would only perpetuate existing inequities in access to safe and affordable drinking water—inequities that the Safe Drinking Water Act (SDWA) is meant to remedy and that President Biden and EPA Administrator Regan have committed to addressing.

Moreover, the utilities' argument is based on a faulty premise that compliance with a protective LCR must come with the burden of unaffordable water bills. This is simply false.

First, opponents of a strong LCR often overstate the likely costs. A detailed analysis of the cost of a planned full lead service line replacement by Elin Betanzo of Safe Water Engineering, based on costs reported by five water utilities with large lead service line replacement programs, concludes that a more likely average cost per full lead service line replacement is roughly similar to the costs EPA estimated in the LCR Revisions when adjusting for inflation,[1] and very similar to the average cost EPA reported in the 7th Drinking Water Infrastructure Needs Survey and Assessment.[2] The EPA and Betanzo estimates are all substantially less—by approximately a factor of two or more—than the per line costs recently estimated by AWWA.[3] Moreover, costs can be reduced substantially through careful planning such as replacing water mains and entire

[1] Elin Betanzo, Safe Water Engineering, Deconstructing the Cost of Lead Service Line Replacement, October 2021, Revised October 2022, https://bit.ly/3OXStkT.
[2] EPA, Drinking Water Infrastructure Needs Survey and Assessment, 7th Report to Congress, Sept. 2023, p. 4, https://www.epa.gov/system/files/documents/2023-09/Seventh%20DWINSA_September2023_Final.pdf.
[3] AWWA, Comments on Lead and Copper Rule Improvements Rulemaking, December 13, 2022, https://www.regulations.gov/comment/EPA-HQ-OW-2022-0813-0031 (suggesting $12,500 average cost per line).

blocks of service lines at the same time, rather than undertaking expensive and inefficient one-off replacements.

The utility sector's exaggerated cost estimates fit a pattern of grossly inflated SDWA compliance cost estimates by AWWA. For example, AWWA funded a recent study by Black and Veatch that suggests EPA's proposed Maximum Contaminant Levels for six PFAS will cost $3.8 billion per year,[4] when EPA's more sober assessment concludes that they will cost more like $777 million per year. A careful comparison of the AWWA and EPA estimates by Elin Betanzo of Safe Water Engineering, which was submitted to EPA, concluded that AWWA has substantially inflated the anticipated PFAS treatment costs with a variety of unsupported assumptions that cause the purported costs to balloon.[5]

Second, even using the water utility sector's own cost estimates, opponents of a strong LCR overstate the significance of those costs relative to the overall scale of investments in water infrastructure. Lead service line replacement and control of lead in tap water are not the major drivers for increased water bills—and they should be prioritized within water utilities' capital improvement programs because of the critical need to protect human health from toxic lead.

The utility sector routinely offers numbers in the multiple trillions of dollars to fully address water infrastructure needs.[6] Whatever the precise number, it is clear that the cost of lead service line replacement is only a small percentage of total water infrastructure needs and is not the primary driver of affordability concerns. Considering the comprehensive scope of water utility infrastructure and service provision, lead service line replacement costs represent an even smaller percentage of utilities' total budgetary needs, when both capital and operating expenses are included.[7] Further, whereas most water utility investment requires ongoing planning for reinvestment, maintenance, and replacement—meaning that projected needs continue to increase when planning horizons are expanded—lead service line replacement is a one-time expense.

Third, as discussed further below, water utilities often overlook steps that utilities, states, and EPA can take to fund compliance costs *without relying exclusively on ratepayers*, and *without imposing unaffordable burdens on low-income residents*. Affordability of water bills for low-

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[4] AWWA statement on proposed PFAS drinking water standards, March 14, 2023, https://www.awwa.org/AWWA-Articles/awwa-statement-on-proposed-pfas-drinking-water-standards#:~:text=recent%20study%20conducted%20by%20Black%20%26%20Veatch%20on%20behalf%20of%20AWWA.

[5] Elin Betanzo, Safe Water Engineering, May 30, 2023, submitted as attachment to comments of Earthjustice, NRDC et al, https://www.regulations.gov/comment/EPA-HQ-OW-2022-0114-1808.

[6] See, e.g., AWWA, *Buried No Longer*, https://www.awwa.org/Portals/0/AWWA/Government/BuriedNoLonger.pdf?ver=2013-03-29-125906-653 (more than $1 trillion for water mains alone over 25 years); Value of Water Campaign & American Society of Civil Engineers, *The Economic Benefits of Investing in Water Infrastructure*, https://www.uswateralliance.org/sites/uswateralliance.org/files/publications/The%20Economic%20Benefits%20of%20Investing%20in%20Water%20Infrastructure_final.pdf (over $3 trillion water and wastewater infrastructure need over 20 years); Value of Water Campaign, "Challenge and Opportunity," https://thevalueofwater.org/the-facts/challenge-and-opportunity (last visited 9/19/23) ($4.8 trillion water and wastewater infrastructure need over 20 years).

[7] See Value of Water Campaign & American Society of Civil Engineers, *The Economic Benefits of Investing in Water Infrastructure* (over $100 billion annual operating expenses for water and wastewater, equivalent to $2 trillion over 20 years).

income customers is, and would continue to be, a challenge for water utilities with or without an obligation to replace lead service lines. The affordability challenge calls for holistic solutions to more equitably fund investment in water infrastructure, while prioritizing investments that meet critical needs for protecting human health.

In recent guidance under the Clean Water Act, EPA took a firm stand that communities must not be left with water that harms their health and the environment simply because their most vulnerable residents cannot afford increased water bills. EPA should take the same strong stand here, under the SDWA.

Specifically, in the February 2023 Clean Water Act Financial Capability Assessment Guidance ("FCA Guidance"), EPA refused to accede to persistent utility demands to weaken standards whenever utilities raise concerns about affordability for low-income households.[8] Instead, EPA's guidance pushes utilities to pursue "strategies for lowering costs and reducing impacts on low-income households"[9] using tools that "ensure that a financial strategy is in place to support needed infrastructure upgrades without overburdening their most vulnerable ratepayers."[10] The guidance identifies "strategies for communities to support affordable utility rates while planning investments in water infrastructure that are essential to protecting clean water….Tools such as variable rate structures, consumer assistance programs, and grants or subsidies from the…State Revolving Fund are some of the tools outlined in the guidance."[11] In releasing the guidance, EPA emphasized its commitment to work closely with state and utilities to deploy these strategies.

EPA should apply the same principles when adopting Safe Drinking Water Act standards for lead: adopt strong standards that are needed to protect human health *and* help water utilities meet those standards without making bills unaffordable for low-income households.

In connection with adopting a final rule, EPA should highlight funding and financing strategies that water utilities can use to achieve these objectives. EPA, the states, and water utilities must all work to implement these strategies. We describe below several key strategies, including maximizing use of available federal funding, especially for disadvantaged communities; maximizing use of other non-ratepayer sources of funding; and adopting equitable rate structures and other programs that can increase rate revenues without burdening low-income customers.

1. Maximize the use of available federal funding, especially for disadvantaged communities.

To help communities achieve the Biden Administration's goal of replacing all lead service lines within 10 years, Congress passed the Bipartisan Infrastructure Law (BIL). On top of federal and state funds available through "base" Drinking Water State Revolving Fund program, the BIL

[8] EPA, Clean Water Act Financial Capability Assessment Guidance, February 2023, https://www.epa.gov/system/files/documents/2023-01/cwa-financial-capability-assessment-guidance.pdf.
[9] EPA, FAQ: Financial Capability Assessment Guidance Questions & Answers, Feb. 1, 2023, https://www.epa.gov/system/files/documents/2023-02/cwa-fca-questions-and-answers.pdf.
[10] EPA, EPA Announces Financial Capability Guidance to Support Communities and Ensure Clean, Affordable Water, Feb. 1, 2023, https://www.epa.gov/newsreleases/epa-announces-financial-capability-guidance-support-communities-and-ensure-clean.
[11] EPA, Fact Sheet: Clean Water Act Financial Capability Assessment Guidance, February 2023, https://www.epa.gov/system/files/documents/2023-02/cwa-fca-fact-sheet.pdf.

provides $15 billion for water utilities to replace lead service lines, of which 49% must be provided as grants and forgivable loans to "eligible recipients," meaning disadvantaged communities.[12] Further, the BIL includes an additional $11.7 billion for drinking water infrastructure needs generally, including lead service line replacement (LSLR), of which 49% is for grants and principal forgiveness to disadvantaged communities. LSLRs done with these funds come at no cost to ratepayers.

Other BIL funding, though not eligible to be used for LSLR costs, indirectly supports water utilities' ability to pay for LSLR by reducing the need to rely on ratepayer funds for capital improvements. This includes, for example, $9 billion in grants for water utilities to address emerging contaminants such as PFAS. For water utilities that function as combined water and wastewater utilities, the BIL's $12.7 billion in clean water infrastructure funds also offset capital improvement costs for wastewater and stormwater management, which would otherwise be passed on to ratepayers on their combined water and sewer bills. In addition, of course, there is funding available under the State Revolving Funds that have been federally capitalized and matched by state funds over the past two and a half decades, which continue to receive annual appropriations of about $1 billion or more. A significant portion of those funds also is reserved for grants and forgivable loans for disadvantaged communities.

Other federal funds are also available, such as Community Development Block Grants (CDBG), which are a major source of water infrastructure funding nationally.[13] EPA has highlighted CDBG as an available source of funds for lead service line replacement, specifically.[14]

Additionally, forty states have collectively dedicated almost $19 billion dollars in American Rescue Plan Act (ARPA) State Fiscal Recovery Fund monies towards water infrastructure, much of which is available to municipal water (and/or wastewater) utilities.[15] The Treasury Department's ARPA rules explicitly authorize the use of these funds for full lead service line replacement, while prohibiting their use for partial replacements.[16]

EPA should continue to bolster its technical assistance efforts to ensure that eligible communities can access all available grants and subsidized loans. Likewise, EPA should bolster its oversight of states' implementation of BIL funds, to ensure that funds designated for disadvantaged communities reach water utilities with the greatest affordability challenges. EPA should closely track distribution of BIL funds (and other federal funds) and continue efforts to identify gaps in funding needs that can be identified for Congressional appropriators.

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[12] Pub. L. No, 117–58, 135 Stat. 429, 1400-01 (Nov. 15, 2021); EPA, "Memorandum: Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law," Mar, 8, 2023, https://www.epa.gov/system/files/documents/2022-03/combined_srf-implementation-memo_final_03.2022.pdf.

[13] The Congressional Research Service (CRS) reports that, "[b]etween FY2016 and FY2020, disbursements by CDBG recipients for water and sewer improvements have averaged $388.4 million per year." CRS, Federally Supported Projects and Programs for Wastewater, Drinking Water, and Water Supply Infrastructure, Updated August 2, 2022, at 45, n. 132, https://crsreports.congress.gov/product/pdf/R/R46471.

[14] https://www.epa.gov/ground-water-and-drinking-water/funding-lead-service-line-replacement#CDBG.

[15] National Council of State Legislatures, ARPA State Fiscal Recovery Fund Database, https://www.ncsl.org/fiscal/arpa-state-fiscal-recovery-fund-allocations (last visited May 22, 2023).

[16] 31 C.F.R. §§ 35.6(e)(1)(iii)(B), (iv)(A); see U.S. Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338, 4414 (Jan. 27, 2022).

2. Maximize use of other non-ratepayer sources of funding to replace lead service lines.

EPA should strongly encourage innovative funding approaches to pay for lead service line replacements. For example, the EPA Administrator and Vice President Harris have celebrated the City of Newark, New Jersey's innovative program to expeditiously replace over 23,000 lead service lines at no cost to ratepayers, which was primarily financed through bonds that are being repaid with revenue provided by leasing fees from the local port authority.[17] In Madison, Wisconsin, the water utility used revenue from allowing cell phone towers to be affixed to utility property to help fund lead service line replacements.[18] Such innovative solutions can help fund these important investments.

3. Adopt equitable rate structures and other programs to increase utility revenue without burdening low-income customers.

As stated above, EPA's FCA Guidance provides a toolkit of approaches that utilities can use to increase investment in water infrastructure without making bills unaffordable for low-income customers. In addition to securing grants and subsidized loans, which reduce the costs of capital improvements for *all* ratepayers, the guidance identifies many steps that utilities can take to reduce costs for low-income customers specifically. These include:

- capping bills for low-income residents at a percentage of income;
- adopting "lifeline" rates with a low charge for an initial amount of usage sufficient to meet each household's essential needs;
- offering bill discounts specifically to low-income customers;
- helping low-income customers repair plumbing leaks and replace old, water-guzzling toilets, which can both reduce utilities' water supply costs and provide ongoing bill reductions for low-income households.[19]

There are water utilities around the country using each of these approaches, to varying degrees. In addition to examples cited in the FCA Guidance, many of the best examples are collected in an extensive water affordability "toolkit" published last year by Natural Resources Defense Council and National Consumer Law Center.[20] That toolkit also provides detailed recommendations on best practices and factors to consider when implementing these strategies.

The FCA Guidance states that technical assistance is available through EPA concerning these approaches. We urge EPA to ramp up its technical assistance offerings on these topics.

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[17] See Gary Brune, Lead Service Line Replacement at a Blistering Pace Newark, New Jersey, Feb 10, 2022, https://www.jerseywaterworks.org/latest-news/lead-service-line-replacement-at-a-blistering-pace-newark-new-jersey/; Andrew Coen, Port Authority lease deal will help Newark replace lead pipes, October 02, 2019, The Bond Buyer, https://www.bondbuyer.com/news/port-authority-lease-deal-will-help-newark-replace-lead-pipes.

[18] EPA, LSLR Financing Case Study: Madison, WI, https://www.epa.gov/dwreginfo/lslr-financing-case-study-madison-wi.

[19] See FCA Guidance, pp. C-6 through C-11.

[20] Natural Resources Defense Council and National Consumer Law Center, *Water Affordability Advocacy Toolkit* (June 2022), https://www.nrdc.org/resources/water-affordability-advocacy-toolkit. Three of the most relevant chapters of from this publication are entitled "Equitable Water Rates," "Affordability and Assistance Programs," and "Water Efficiency and Plumbing Repair Assistance."

Additionally, we urge EPA to expeditiously complete the "needs assessment for nationwide rural and urban low-income community water assistance" required by the BIL, in which EPA is required to provide Congress with "recommendations of the Administrator regarding the best methods to reduce the prevalence of a lack of affordable access to water services."[21]

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Thank you for your consideration of these comments. We look forward to a revised Lead and Copper Rule from EPA, coupled with supporting resources, that will protect communities from toxic lead contamination while helping water utilities achieve affordable bills for their customers.

Submitted on behalf of the following organizations:

National
American Rivers
Anthropocene Alliance
Black Millennials 4 Flint
Campaign for Lead Free Water
Clean Water Action
CleanEarth4Kids.org
Earthjustice
Environment America Research & Policy Center
Environmental Working Group
Families Advocating for Chemical and Toxics Safety
Food & Water Watch
GreenLatinos
League of Conservation Voters (LCV)
National Tribal Emergency Management Council
Natural Resources Defense Council (NRDC)
Non Toxic Communities
Pacific Institute
River Network
The Center for Water Security and Cooperation
Waterkeeper Alliance

Regional/Multi-state
Alliance for the Great Lakes (*Great Lakes)*
Appalachian Citizens' Law Center, Inc. (*Central Appalachia*)
Conservation Law Foundation (*New England*)
Earth Ethics, Inc. (*FL, AL, MS, LA, TX, CO, NM*)
For Love of Water (FLOW) (*Great Lakes*)
Freshwater Future (*Great Lakes*)

[21] Pub. L. No, 117–58, 135 Stat. 429, 50108 (Nov. 15, 2021).

Ohio River Foundation (*Ohio River Watershed - 14 states*)

Alabama
Alabama Rivers Alliance
Cahaba River Society

California
California Environmental Voters
Moms Advocating Sustainability
Physicians for Social Responsibility-Los Angeles
Social Eco Education (SEE)

Colorado
Colorado Public Interest Research Group (CoPIRG)
Our Sacred Earth
Promotores Verdes (Americas for Conservation + the Arts)
San Luis Valley Ecosystem Council

Georgia
Coosa River Basin Initiative
Dekalb Water Watch
Harambee House, Inc. / Citizens for Environmental Justice

Illinois
Bridges // Puentes Justice Collective of the Southeast
Committee on the Middle Fork Vermilion River
Equitable Resilience & Sustainability LLC
Illinois Environmental Council
Illinois PIRG
Little Village Environmental Justice Organization

Louisiana
Micah Six Eight Mission
The Water Collaborative of Greater New Orleans

Maryland
Gunpowder Riverkeeper
Maryland PIRG

Michigan
Benton Harbor Community Water Council
Flint Rising
Great Lakes Environmental Law Center
People's Water Board Coalition
Water You Fighting For?
We the People of Detroit

Minnesota
Minnesota Environmental Partnership

Missouri
Missouri Confluence Waterkeeper

New Jersey
NewarkDIG (Doing Infrastructure Green)
Urban Promise Trenton/East Trenton Collaborative

New York
Environmental Advocates NY
Heart of the City Neighborhoods, Inc.
NAACP New York State Conference
Newburgh Clean Water Project
Tenants Political Action Committee

North Carolina
Clean Water for North Carolina
NC Conservation Network

Ohio
Collective Citizens Organized Against Lead (CCOAL)

Oregon
Portland Advocates for Leadfree Drinking Water
Tualatin Riverkeepers
Verde

Pennsylvania
Community Legal Services of Philadelphia
PennFuture
Pennsylvania Utility Law Project

South Dakota
Oglala Sioux Tribe

Texas
Bayou City Waterkeeper

Virginia
Virginia Conservation Network

Wisconsin
Coalition on Lead Emergency (COLE)
Milwaukee Riverkeeper