

**TESTIMONY PRESENTED BY TERRY R. YELLIG  
ON BEHALF OF THE BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO,  
BEFORE  
THE SENATE COMMITTEE ON  
THE ENVIRONMENT & PUBLIC WORKS**

My name is Terry R. Yellig, and I am testifying on behalf of the fourteen affiliated unions that comprise the Building & Construction Trades Department of the AFL-CIO and the millions of skilled construction workers who they represent.

We commend Chairmen Graham and Jeffords, as well as Senators Crapo and Smith, for introducing S. 1961, the Water Investment Act of 2002, which would authorize \$36 billion over five (5) years for investment in America's clean water and safe drinking water infrastructure.

Authorization of funds of this magnitude is a critically important first-step in meeting the well-documented water infrastructure needs throughout this country. Various governmental entities, as well as private groups, have documented the hundreds of billions of dollars of water infrastructure needs facing our Nation. EPA Administrator Christine Todd Whitman testified before this Committee that estimated water infrastructure needs could total as much as a "trillion dollars." As we all know, recent appropriations have only provided approximately \$2 billion per year worth of the Nation's clean water and safe drinking water infrastructure needs. These are woefully inadequate amounts given the acknowledged needs

assessments. That is why we are encouraged by the introduction of S. 1961, the Water Investment Act, and view it as an important congressional statement that begins seriously to address the water needs of America.

Notwithstanding, the building and construction trade unions strongly feel that more should be done at the federal level to address our massive water infrastructure needs. We recognize the constraints that looming federal budget deficits impose on federal infrastructure programs, especially on those without dedicated revenue streams such as those that fund the Highway and Aviation Trust Funds. Nevertheless, our Nation's water needs demand a broader based federal commitment.

Investment in critical water infrastructure by the Federal Government is as important to our country's economic well being as investment in our highways, transit systems and airports. From our perspective, significant federal infrastructure investment is the predicate to, and the catalyst for, long-term economic growth and vitality. Robust economic growth will be stymied without sufficient investment in new and improved wastewater treatment facilities, as well as an abundant supply of safe drinking water and the systems to deliver it.

Given enactment in recent years of legislation addressing significant surface transportation and aviation infrastructure issues facing this country, we strongly urge the Committee to take a long hard look at authorizing even higher levels of

spending in S. 1961 in order to bring investment levels up to the \$50 billion to \$60 billion level over the next five-year authorization period.

Clearly the needs are there. We call to the Committee's attention the persuasive needs assessment report, "Water Infrastructure Now," prepared by the Water Infrastructure Network ("WIN"), a broad-based coalition of locally elected officials, drinking water and waste water service providers, contractors and engineers, environmentalists and key building trade unions. This report makes a compelling case for a \$57 billion investment program over a typical five-year authorization cycle.

Many of the witnesses at this and other hearings this Committee has scheduled will discuss a variety of discreet policy issues pertaining to various aspects of S. 1961, and other important pieces of water legislation such as Senator Voynovich's bill to reauthorize the Clean Water Act state revolving loan fund program, S. 252. As building and construction trades unions, we pledge our support to moving water infrastructure legislation through Congress that authorizes as much funding for clean water and safe drinking water as possible.

One of our primary responsibilities as building and construction trades unions is to provide the skilled manpower necessary to address this country's water infrastructure needs under whichever legislative framework Congress enacts into law.

From heavy equipment operators to laborers, from ironworkers to carpenters, bricklayers and cement masons, we are prepared to provide the skilled craft workers who will build the water infrastructure projects authorized by S. 1961 in a timely, efficient and safe manner.

As we stated earlier, the magnitude of this country's water infrastructure needs is such that Congress needs to authorize higher funding levels that will enable state and local water authorities seriously to begin addressing this problem within a reasonable time frame. In addition to the various other policy considerations in this legislation, it obviously would create tens of thousands of jobs and provide real economic stimulus to this country's economy. In our judgement, there is no better economic stimulus than to put paychecks into the hands of the American workers, contractors and suppliers who will build this country's water infrastructure.

We are also concerned about the labor standards that will be applicable to construction workers employed on federally assisted water infrastructure projects. Specifically, we respectfully urge this Committee to take steps necessary to insure that Davis-Bacon prevailing wages are paid on all such projects assisted under the Clean Water and Safe Drinking Water Acts.

As many members of this Committee are well aware, for 71 years Congress has consistently applied the Davis-Bacon prevailing wage requirements to federal

infrastructure programs regardless of whether it was under Democratic or Republican control, or whether there was a Democratic or Republican Administration in the White House.

The original policy of the Davis-Bacon Act was to acknowledge the potentially disruptive impact of federal construction programs on local construction markets. Accordingly, the public policy interest set forth repeatedly by Congress in more than 60 federal statutes over the past 71 years has been to require contractors working on federally assisted construction programs to pay locally prevailing wages as determined by the U.S. Department of labor.

In recent years, as Congress has considered using a variety of so-called innovative financing mechanisms such as revolving loan fund programs, credit enhancement programs, and loan guarantee programs, all of which are intended to leverage limited federal capital for maximum public benefit, as well as more traditional federal grant programs, it has steadfastly continued to apply complete and comprehensive Davis-Bacon prevailing wage coverage to these programs.

In fact, Congress included comprehensive Davis-Bacon prevailing wage requirements in the Clean Water Act in 1972 and in the original Safe Drinking Water Act in 1974. However, the 1987 Water Quality Act shifted federal support for water treatment projects under the Clean Water Act from a program of direct federal grants to a program of federal capitalization grants to support State Revolv-

ing Loan Funds (“SRF”) with the intention of phasing out the federal capitalization grant program by the end of FY 1994.

Notwithstanding Congress’ expectation that State Revolving Funds would become completely self sufficient by FY 1995, they were not. On the contrary, Congress has continued to appropriate funds for new federal capitalization grants to the States every year since FY 1995. Moreover, after enactment of the 1987 Water Quality Act, the Administrator of the Department of Labor’s Wage and Hour Division concluded that, under newly-enacted § 602(b)(6) of the Clean Water Act, the Davis-Bacon prevailing wage requirement did not apply to “state matching funds required to be contributed into the SRF, monies repaid to the SRF, or other monies.”

Under this interpretation, the first time State Revolving Funds provided assistance that is supported by federal capitalization grant funds to help finance construction of a water treatment project, the Davis-Bacon requirement was applied; however, when the assistance was repaid to the State Revolving Fund and then “recycled” to assist construction of another water treatment project, according to DOL and EPA, Davis-Bacon prevailing wage requirements would not apply.

This interpretation would, in the long-term, undermine the longstanding policy of assuring that all workers on projects supported by Clean Water Act grants are paid not less than the prevailing wage. This Committee attempted to set EPA

and DOL straight on this issue in 1994 when it reported S. 2093, the Water Pollution Prevention and Control Act, which stated, among other things, that the Davis-Bacon prevailing wage requirement in the Clean Water Act applies to any project assisted by a loan or other type of assistance given by a State Revolving Fund, including projects assisted by recycled funds.

Unfortunately, the full Senate failed to take action on S. 2093.

In addition, § 602(b)(6) of the CWA currently provides that the Davis-Bacon prevailing wage requirement only applies to construction of water treatment works projects financed by federal funds made directly available to State Revolving Funds that began before the end of FY 1994. Notwithstanding continuation of federal financial assistance to the State Revolving Funds, EPA says that the Davis-Bacon prevailing wage requirement no longer applies even to construction of water treatment projects financed in whole or in part with funds directly made available through federal capitalization grants, because of the language in § 602(b)(6) of the Clean Water Act.

Accordingly, it is necessary to amend § 602(b)(6) of the CWA so that the Davis-Bacon prevailing wage requirement applies to construction of all water treatment projects assisted in whole or in part by SRFs with federal funds, including those supported by funds directly made available through federal capitalization grants and those supported by “recycled” federal funds.

Similarly, the Safe Drinking Water Act includes a broadly worded provision that directs the EPA Administrator to “take such action as may be necessary to assure compliance with provisions of the [Davis-Bacon Act].” In 1994, the Senate passed, but the House failed to act on the Safe Drinking Water Act amendments that, among other things, would have encouraged states to create revolving loan funds for drinking water projects funded by federal capitalization grants to finance loans and other types of financial assistance to public water systems.

The proposed 1994 Act anticipated that, like the SRF program created in the Clean Water Act, as the loans and other types of financial assistance were repaid, the revolving loan fund would be replenished, and new loans and other types of financial assistance could be made for other eligible drinking water projects. The proposed 1994 Act included an additional Davis-Bacon labor standards provision that clearly applied federal prevailing wage requirements to laborers and mechanics employed on projects assisted by State Revolving Loan Funds, including any assistance financed by repayments to the SRF.

Subsequently, Congress enacted the Safe Drinking Water Act Amendments of 1996, which finally created a State Revolving Fund program that provides annual capitalization grants to each State in order to fund a State Revolving Fund that provides financial assistance to local agencies to facilitate compliance with EPA’s National primary drinking water standards. The Safe Drinking Water Act



Amendments of 1996 did not, like the 1994 bill that passed the Senate but was not acted upon by the House, include a separate Davis-Bacon provision.

There was no attempt to add a Davis-Bacon provision to the 1996 Act, because it was my opinion as Counsel to the Building and Construction Trades Department that the Davis-Bacon provision already in the Safe Drinking Water Act was sufficiently broad to cover all construction projects supported by State Revolving Funds with funds directly made available from federal capitalization grants or with “recycled” funds made available by repayment of federal capitalization grant funds.

However, contrary to the EPA Administrator’s obligation under the Act to “take such action as may be necessary to assure compliance with provisions of the [Davis-Bacon Act],” she now claims that the Davis-Bacon prevailing wage requirement in the Safe Drinking Water Act does not apply to any construction projects supported by State Revolving Funds. Accordingly, the Davis-Bacon prevailing wage requirement in the Safe Drinking Water Act must be amended to make it clear that Davis-Bacon requirements apply to all construction projects supported by SRFs whether with funds directly made available from federal capitalization grants or with “recycled” funds made available by repayment of federal capitalization grant funds.

To fail to provide full Davis-Bacon coverage of water infrastructure projects assisted by State Revolving Funds under both the Clean Water Act and the Safe Drinking Water Act would, in our opinion, result in the piecemeal repeal of Davis-Bacon prevailing wages on a major federal construction program contrary to Congressional intent in the original Clean Water and Safe Drinking Water Acts, not to mention the other 60 or so federal statutes that have extended federal prevailing wage requirements to a myriad of other federally assisted construction programs.

We again commend the Committee for coming to grips with our significant clean water and safe drinking water infrastructure needs, and we look forward to working with Senators on both sides of the aisle as the process moves forward.