BLUE PLAINS WASTEWATER TREATMENT PLANT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE
DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 12, 1996

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BLUE PLAINS WASTEWATER TREATMENT PLANT

WEDNESDAY, JUNE 12, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2247, Rayburn House Office Building, Hon. Thomas M. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis, Gutknecht, McHugh, and Holmes-Norton.

Also present: Representative Morella.

Staff present: Ron Hamm, staff director; Anne Mack, professional staff member; Ellen Brown, clerk; and Cedric Hendricks, minority professional staff member.

Mr. DAVIS. The meeting will come to order.

We are here today to conduct a legislative hearing on the creation of an independent Water and Sewer Authority within the District of Columbia government. Creation of this new authority, while not perfect, is a significant step in reforming the District of Columbia government and improving its provision of water to its citizens and wastewater treatment to the District and to hundreds of thousands of residents of Maryland and Virginia.

A two-step process is needed to complete this undertaking. The District government passed this legislation creating the new authority and setting out its parameters of operation. That legislation was amended by the council on June 5 with various provisions substantially improving the original legislation. I applaud the council for their actions. I also applaud and thank the Mayor and city administrator, Michael Rogers, for their year-long efforts to negotiate with Montgomery and Prince Georges Counties in Maryland and Fairfax County in Virginia to create an authority with suburban voting representatives on the board and a mission statement that the counties can support. I know the road has not always been smooth and that there are still lingering concerns; but today does mark a high point of regional cooperation. I hope that over the coming months and years we will see many more instances of such cooperation.

I believe that the negotiations after the council first passed the legislation were productive. The subcommittee worked closely with the city and representatives of the counties. My staff consulted with representatives of the private financial community and met several times with Mr. Rogers. I believe that the amendments of

June 5 have significantly improved the District legislation both in the acceptability of the authority to the bond market and in the structure and performance of the authority itself. This was done in a spirit of cooperation and good will so that the District could enact the authority legislation rather than have Congress write it for the city. I am proud of this process and pleased with the product. It is not perfect and it is not the way we would have written it ourselves; but I believe the fact that the counties nominated their board members on May 26 speaks for itself as to the outcome of this process.

The second step in setting up the Sewer and Water Authority is for Congress to allow the city to grant revenue bond power to the authority. A discussion draft of that legislation has been sent to all of the witnesses, and I anticipate some discussion on particular provisions of that draft. The intent is to give the Water and Sewer Authority the independence to conduct its affairs outside the realm of District politics and budget battles.

The District of Columbia Water and Sewer Authority will be self-funding. It will send out bills and collect its own revenues, independent of the rest of the District government and the general fund. The District legislation explicitly forbids the transfer of money from the Water and Sewer Authority to the general fund except in the one instance of paying the debt service on outstanding general obligation bonds issued for water and sewer purposes.

The WSA will be a cooperative effort between the suburbs and the District. Approving the budget and hiring and firing the general manager require at least one suburban vote which guarantees substantial influence to the suburbs. This is important because now all the stakeholders in Blue Plains will have a real say in how it is operated and maintained.

Blue Plains has been a problem far too long. EPA testified before this subcommittee in February that there is a significant risk of an environmental disaster if the operation of Blue Plains is not improved. Mr. McCabe is here today and I expect an update from him, but this new Authority is intended to remove many of the obstacles that the District has cited as hampering the performance of Blue Plains. Many parts of the entire metropolitan region are served by Blue Plains. Millions more people are potentially impacted by the threat of a breakdown at Blue Plains, polluting the Potomac River and the Chesapeake Bay.

I would also like to take this opportunity to thank the Council of Governments for its role and help in addressing this important issue. Although not directly involved in many of the negotiations, COG has been involved in the Blue Plains issue for many years and was instrumental in arranging the IMA in 1985. COG staff was of great help to the subcommittee staff in working on this issue for the past year. I would particularly like to thank Mr. Stuart Freudberg and Mr. John Bosley for their efforts. COG does an awful lot of its work behind the scenes and too often gets overlooked when the accolades are passed out.

This hearing will help build the record for creating the Water and Sewer Authority. During the hearing I will address provisions of the District legislation and issues that have been left to the board to settle. It is important that everyone involved in this enter-

prise understand the goals and the limitations of the Authority and that many issues can only be resolved as the Authority moves forward. Cooperation among the board members and their respective jurisdictions will be vital to the success of this undertaking. In addition, Congress will retain its full authority of oversight and legislation for the District. If problems develop, we will be prepared to deal with them in whatever way may seem appropriate.

[The prepared statement of Hon. Thomas M. Davis follows:]

ONE HUNDRED FOURTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

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WASHINGTON, DC 20515–6143

Opening Statement of

Tom Davis, Chairman
Subcommittee on the District of Columbia

June 12, 1996

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Mr. DAVIS. I look around, see if any other Members have any opening statements, and, at this point, they do not. And the schedule calls for Mr. Hoyer and Mr. Wynn to testify, but a scheduling conflict I know will keep them occupied for some time. They will be recognized when they arrive.

We would now like to hear from the District of Columbia. I see Mr. Rogers has come in. Mr. Michael Rogers, the city administrator, is the chief architect of the Water and Sewer Authority. And Mr. Larry King—is Larry here? I'll let you start—the director of the public works has been responsible for Blue Plains, and I welcome him.

Michael, I want you to know that we—you'll have something to say about one provision in the legislation, so let me start by thanking you for your efforts in this matter. We would not be here today if it weren't for your hard work on this issue, and I sincerely mean that. You have made a huge difference. You have been honest and forthright throughout, and I hope that the Mayor and the Council understand that you're the reason we're not drafting the water and sewer legislation from here.

Now, you can go complain, and we'll all listen to your concerns.

You know it's the policy of the committee to swear you in.

[Witness sworn.]

Mr. DAVIS. I just ask the staff when they see Mr. King come in, if we can escort him to the table, and we'll move right along. Got to get comfortable first.

STATEMENTS OF MICHAEL C. ROGERS, CITY ADMINISTRATOR, DISTRICT OF COLUMBIA; AND LARRY KING, DIRECTOR, DEPARTMENT OF PUBLIC WORKS, DISTRICT OF COLUMBIA

Mr. ROGERS. Good morning, Mr. Chairman, members of the District of Columbia Subcommittee. I am Michael C. Rogers, city administrator for the District of Columbia. Thank you for the opportunity to present testimony on emergency legislation recently passed by the Council of the District of Columbia amending the water and sewer authority establishment and Department of Public Works Reorganization Act of 1996. We are also here to discuss proposed congressional legislation to amend the District's Home Rule Act to enable to new Authority to see revenue bonds. We have reviewed the proposed amendments to the Home Rule Act, and have significant concerns about the impact of the proposed amendments on the new authority's and the District's ability to enter financial markets in the future. I was informed last night that one of the concerns that I will raise later in the testimony was not intended, and would be addressed in days ahead. I will still present the District's concern on this issue for the record.

In addition, the proposed congressional legislation further amends provisions in the Home Rule Act that are not at all related to the authority's bonding needs, issues that are better left to the discretion and control of our local government and the residents we serve.

Before I begin my formal presentation, let me put this entire issue of the water—new water and sewer authority in its proper perspective. First and foremost, our wastewater treatment system, Blue Plains, is the District's single most valuable public asset.

There is no other treatment facility of its size nor sophistication in the region or the country. Assessed at approximately $1.4 billion, Blue Plains is situated on more than 154 acres of prime waterfront land in southwest Washington, DC. It is, rightfully, a resource and capital asset that is owned by the District of Columbia and its residents.

I read, with great interest, the background briefing memo prepared for the D.C. Subcommittee, which stated that the Water and Sewer Authority legislation was passed this year in response to EPA, congressional, and user demands. For the record, let me state that the Mayor, upon my arrival as city administrator of the District of Columbia, directed me to inform our suburban customers of the District's intent to establish an independent regional authority. Less than a month on the job, on a blustery March morning last year, I proposed this concept to our suburban customers who, in turn, were extremely appreciated of the Mayor's vision and commitment to the region's environmental needs.

Immediately upon the District's announcement of its intent to establish the new authority, the District and its suburban Blue Plains customers began working shoulder to shoulder to craft a document and an entity that we could all live with; one that would meet our wastewater treatment needs in every aspect; a facility that would be free of the budget and cost control reductions as well as the procurement and personnel processes that were hampering efficient plant operation. We, here in the District, worked hard to structure an equitable model that would not only meet District and regional environmental requirements, but also protect Blue Plains as a District asset. This has not been an easy job, particularly since there are individuals who strongly believe that the less District involvement at the plant the better, or, worse, that the facility has no chance of ever running efficiently unless the District's role in governance, operations, and administration is significantly diminished. This reasoning defies logic, particularly since a great portion of the plant currently relies heavily on contractor-provided services. Moreover, were it not for our acute fiscal condition and the unwise decisions of the prior administration to deny the former utility access to millions of dollars in retained earnings, we would not be facing many of the challenges we read and hear about today.

With respect to the latter issue, it is time to set a few things straight. There have been repeated claims that money paid by suburban ratepayers had been improperly diverted to District government purposes. This claim is simply baseless. The money in the water and sewer enterprise fund reserves was paid solely by District of Columbia retail customers. The IMA formulas under which the suburban customers are charged are based on cost recovery only. Let me state that: The IMA formulas under which the suburban customers are charged are based on cost recovery only, without any allowance for building reserves. None of our wholesale customers paid anything toward the reserves. These funds were derived from water and sewer charges paid by the residents of the District of Columbia. As such, suburban taxpayer money was not diverted even temporarily to the general fund.

Irrespective of the merits of this particular point, the essence of the problem remains, and that is cash reserves have not been

available for plant operations. The Mayor has taken concrete steps to address this issue. The Mayor's fiscal year 1997 budget and multiyear plan provides for the restoration of $83 million in equal payments over the next 4 fiscal years beginning October 1, 1997.

Over the past 15 months, we have worked diligently on this and other Blue Plains issues, pushing the envelope, shaking up the status quo, rethinking how best we could work with the region to provide a better service, to the extent that the new authority is, by far, the most independent of District agencies. Having made these observations, let me move to the legislative issues.

I am tempted, in the interest of time, to simply spell out the provisions of the recently passed emergency legislation without addressing the base provisions of the original legislation passed by the council last January. This, however, would not present an accurate picture of how far we have come along in this process, nor how far we have gone to meet suburban needs and concerns. The original legislation provided the following: One, it exempts the authority's budget from revision by the Mayor and city council; empowers the authority to establish a separate procurement and personnel system; it did not change or alter the terms of the intermunicipal agreement between Blue Plains users; it empowers the authority to issue revenue bonds and establish, levy, and collect revenues and fees; it enables the authority to determine water rates; it separates authority funds and revenues from the District's general fund.

From a governance standpoint, the original legislation also established a 10-member board of directors, 4 of which represented suburban customers. It provided these members with voting rights, including a super majority vote of seven on budget issues and on hiring the general manager. Finally, it authorized suburban participation on voting on all general management issues affecting joint use facilities, thereby placing every component of the District's water distribution and sewage system under the control of the authority, an entity comprised of multiple jurisdictions with extraordinary voting powers, some of which are superior to the host jurisdiction and title holder to this facility. This legislation was approved by the Mayor, the council, the control board, the suburban jurisdictions, and, finally, by the U.S. Congress 2 months ago.

Now about the District's emergency legislation. On May 30, 1996, the Mayor submitted additional legislative amendments to the water and sewer legislation, following continued discussion with congressional staff and still more negotiations with suburban customers. The Mayor stated in his letter to Chairman Clarke that he was concerned that, "The dissatisfaction publicly expressed by three suburban counties with the size and composition of the board may manifest itself in their less than whole-hearted participation in the new authority." The letter proceeds to outline key amendments to existing legislation as follows: They increased the size of the authority's board from 10 to 11 members to raise the number of suburban board members from 4 to 5; it required 8 votes for hiring and firing of the general manager; it clarified that the authority is to collect its revenues and disburse its expenses, not the Mayor; further clarified that funds received by the authority are not to be commingled with funds and accounts of the District; it

clarified privatization options regarding operations and maintenance activities, making the privatization of these functions a decision of the board, not the Mayor or council of the District; specified that the authority's multiyear plan include at least 5 fiscal years; it required the authority to set its rates and other charges so that, together, with its other revenues, it will have sufficient funds to pay its costs, debt service obligations, and make debt service transfers to the District; conditions—it also conditions the authority's issuance of revenue bonds upon its certifying, to the satisfaction of the District of Columbia auditor, that the authority has sufficient revenue to pay its costs and debt service obligations on existing and proposed revenue bonds.

Given the extensiveness of these emergency provisions, the District fully believed that the only thing legislatively to do was to request Congress to amend the Home Rule Act to enable the new authority to issue revenue bonds.

Over the years, we have viewed our suburban customers are regional partners, not adversaries. We have continued to view them as partners throughout the more than 15 months of negotiations and discussions we have had developing this authority. We are dismayed, however, and extremely disappointed that the sum total of these negotiations have apparently been reduced to the Congress of the United States taking the extreme position of altering our home rule charter to accommodate suburban interests and concerns, obviously overlooking District laws and processes that have already been stretched to the legal limit.

More specifically, it is highly objectionable, legally and otherwise, for the U.S. Congress to dictate, through the amendments currently before you, an eight-vote majority on budget matters of joint-use facilities. The current legislation passed by the Congress last April already allows for a seven-vote majority on all budget issues, a provision that ensures at least one affirmative vote by a suburban jurisdiction before passage of the budget. In addition, the emergency legislation, as previously mentioned, similarly provides an eight-vote majority on the hiring and firing of the general manager, ensuring, therefore, at least two affirmative suburban votes before a given action is taken on this matter. Throughout our negotiations, the District's Office of Corporation Counsel has expressed strong misgivings over the governance structure of the authority legislation, particularly as it pertains to super majority accommodations.

The Mayor and I, however, were willing to override these concerns in the interest of regional unity and progress, deciding, notwithstanding the objections of our lawyers, to proceed with this governance plan on the basis of the belief that the best interest of the District could still be protected. However, I cannot conclude that allowing a second representative to veto the authority's budget would still be in the interest, the best interest, of the District or the authority, for that matter. It completely crosses the line, in my opinion, Mr. Chairman, and should be stricken from the proposed Home Rule Act amendments. Moreover, this action flies in the face of all of the good faith negotiations we have had with the suburban jurisdictions and the many accommodations we have already conceded to make this authority a reality. It is patently unfair for the Congress to force this upon the District when we have already sur-

rendered so much. More, I am confident that most jurisdictions, including our suburban neighbors, would concede were the tables reversed. In other words, if we—on the other side, I don't think anybody would have gone as far as the District. And we did this in the full belief that it would be in the best interest to go as far as we did, the best interest of the District, the best interest of the region, and the best interest of this new authority, to get it off the ground.

And let's talk about the proposed bonding amendments. I know I'm taking more time, but I think that this is important. Apart from this governance issue, the home rule amendments introduced by Congressman Davis contains numerous deficiencies and ambiguities that will hamper both the new authority's ability to market its bonds as well as the District's future ability to borrow. Please consider the following concerns: The proposal sets forth new terms for the type of facilities for which revenue bonds may be issued that do not appear to have historical industry acceptance and may be too limiting. Specifically, the descriptions utilized throughout the draft legislation, of the types of facilities for which revenue bonds may be issued, identified as water distribution and wastewater treatment and transmission facilities, is too restrictive. Such terms do not subsume within their meaning obtaining and treatment of water or the storage or wastewater or handling of storm drainage. The effect would restrict issuing revenue bonds for critical wastewater and water distribution purposes. The District's alternative legislation, submitted to congressional staff, contains broader terminology which encompasses these activities.

Proposed amendments failed to empower the authority to refinance projects. This omission is critical and could greatly hamper the new authority's ability to carry out its functions. In addition, by including so much of the authority's bond issuing powers in subsection H, Congressman Davis' bill excludes generic revenue bond provisions contained in section 490 of the Home Rule Act. Consequently those Home Rule Act provisions would not apply.

The Davis bill, as currently proposed, does not remove the District's debt ceiling computation, that portion of the District's general obligation debt issued prior to October 1, 1996, attributable to water and sewer capital projects. Pursuant to the current water and sewer authority legislation, all revenues of the authority are excluded from the general fund. As such, the revenues are also excluded from the revenue calculation for the District's debt limit. The legislation also provides for a payment to the District from the authority to fund the debt service attributable to the general obligation bonds issued to finance water and sewer capital improvements. As such, the debt service on outstanding general obligation bonds on the District, attributable to the water and sewer authority, are self-supporting. Therefore, it is reasonable to conclude that this debt service should also be excluded from the debt ceiling calculation.

It's hard on your ears. It's hard on my voice. In conversations with the subcommittee staff, it is our understanding that it is the intent of the committee to effectuate not only the exclusion of the revenues from the debt ceiling, but also debt service. As presently written, the proposed legislation excludes gross revenues of the authority, includes the payment from the authority, but also includes

the debt service on the bonds in the debt service calculation. We believe a more efficient process would be to exclude all revenues, including the payment from the authority, from the revenues and debt service on the water and sewer related bonds. We have included, as an exhibit, the impact of the various calculations on the District's debt issuance capacity. We believe the calculation, under the heading "District Proposed" accomplishes the intent of the committee and the District.

As you know, the District is not requiring the new authority to defease, repay, or accept legal responsibility for the WASUA related portion of the old general obligation debt, although it would be highly advantageous for the District to do so. However, the District cannot also be asked to compromise its future ability to borrow because of its desire for the authority to enter the bond market in the best possible position. The District must generate $14 of revenue for $1 of WASUA debt that remains in the District's debt service computation. Clearly, this is too great a burden for the District. We look forward to working with you in modifying this language in the days ahead.

In conclusion, in spite of the prolonged negotiation process, I am proud to say that the District has been busy going about the task of ensuring that, come October 1, the new authority will have its board of directors established, employees transferred, and funds collected by the authority and accounted for in a completely separate system from the District. We have tremendous confidence that the new authority will succeed and that our jurisdictional interests, which seem so wide and disparate now, will indeed become one common goal.

Our commitment and support of the new authority has been unwavering. It symbolizes the kind of achievements we must make as we transform the District government into a lean, better managed, more competitive organization. I am particularly appreciative of the support we have received from the Mayor, Council Member Harry Thomas, chair of our public works committee, the Control Board, Congresswoman Norton, and you, Mr. Chairman. Finally, I again extend my full cooperation in the weeks ahead to our suburban neighbors as we forge ahead onto uncharted territory. Thank you gain for allowing me this opportunity and listening to this long testimony, but we made the points that we felt needed to be made on this important piece of legislation.

[The prepared statement of Mr. Rogers follows:]

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GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE DISTRICT OF COLUMBIA SUBCOMMITTEE. I AM MICHAEL C. ROGERS, CITY ADMINISTRATOR FOR THE DISTRICT OF COLUMBIA. THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON EMERGENCY LEGISLATION RECENTLY PASSED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA AMENDING THE WATER AND SEWER AUTHORITY ESTABLISHMENT AND DEPARTMENT OF PUBLIC WORKS REORGANIZATION ACT OF 1996. WE ARE ALSO HERE TO DISCUSS PROPOSED CONGRESSIONAL LEGISLATION TO AMEND THE DISTRICT'S HOME RULE ACT TO ENABLE THE NEW AUTHORITY TO SELL REVENUE BONDS. WE HAVE REVIEWED THE PROPOSED AMENDMENTS TO THE HOME RULE ACT, AND HAVE SIGNIFICANT CONCERNS ABOUT THE IMPACT OF THE PROPOSED AMENDMENTS ON THE NEW AUTHORITY'S AND THE DISTRICT'S ABILITY TO ENTER FINANCIAL MARKETS IN THE FUTURE. I WAS INFORMED LAST NIGHT THAT ONE OF THE CONCERNS THAT I WILL RAISE LATER IN THE TESTIMONY WAS NOT INTENDED, AND WOULD BE ADDRESSED IN THE DAYS AHEAD. I WILL STILL PRESENT THE DISTRICT'S CONCERNS ON THIS ISSUE FOR THE RECORD.

IN ADDITION, THE PROPOSED CONGRESSIONAL LEGISLATION FURTHER

AMENDS PROVISIONS IN THE HOME RULE ACT THAT ARE NOT AT ALL RELATED TO THE AUTHORITY'S BONDING NEEDS--ISSUES THAT ARE BETTER LEFT TO THE DISCRETION AND CONTROL OF OUR LOCAL GOVERNMENT AND THE RESIDENTS WE SERVE.

BEFORE I BEGIN MY FORMAL PRESENTATION, LET ME PUT THIS ENTIRE ISSUE OF THE NEW WATER AND SEWER AUTHORITY IN ITS PROPER PERSPECTIVE. FIRST AND FOREMOST, OUR WASTEWATER TREATMENT SYSTEM--BLUE PLAINS--IS THE DISTRICT'S SINGLE MOST VALUABLE PUBLIC ASSET. THERE IS NO OTHER TREATMENT FACILITY OF ITS SIZE NOR SOPHISTICATION IN THE REGION OR THE COUNTRY. ASSESSED AT APPROXIMATELY $1.4 BILLION, BLUE PLAINS IS SITUATED ON MORE THAN 154 ACRES OF PRIME WATERFRONT LAND IN SOUTHWEST, WASHINGTON, D.C. IT IS, RIGHTFULLY, A RESOURCE AND CAPITAL ASSET THAT IS OWNED BY THE DISTRICT OF COLUMBIA AND ITS RESIDENTS.

I READ WITH GREAT INTEREST, THE BACKGROUND BRIEFING MEMO PREPARED FOR THE D.C. SUBCOMMITTEE WHICH STATED THAT THE

WATER AND SEWER AUTHORITY LEGISLATION WAS PASSED THIS YEAR IN RESPONSE TO EPA, CONGRESSIONAL AND USER DEMANDS. FOR THE RECORD, LET ME STATE THAT THE MAYOR, UPON MY ARRIVAL AS THE CITY ADMINISTRATOR FOR THE DISTRICT OF COLUMBIA, DIRECTED ME TO INFORM OUR SUBURBAN CUSTOMERS OF THE DISTRICT'S INTENT TO ESTABLISH AN INDEPENDENT REGIONAL AUTHORITY. LESS THAN A MONTH ON THE JOB, ON A BLUSTERY MARCH MORNING LAST YEAR, I PROPOSED THIS CONCEPT TO OUR SUBURBAN CUSTOMERS WHO, IN TURN, WERE EXTREMELY APPRECIATIVE OF THE MAYOR'S VISION AND COMMITMENT TO THE REGION'S ENVIRONMENTAL NEEDS.

IMMEDIATELY UPON THE DISTRICT'S ANNOUNCEMENT OF IT'S INTENT TO ESTABLISH THE NEW AUTHORITY, THE DISTRICT AND ITS SUBURBAN BLUE PLAINS CUSTOMERS BEGAN WORKING SHOULDER TO SHOULDER TO CRAFT A DOCUMENT AND AN ENTITY THAT WE COULD ALL LIVE WITH; ONE THAT WOULD MEET OUR WASTEWATER TREATMENT NEEDS IN EVERY ASPECT; A FACILITY THAT WOULD BE FREE OF THE BUDGET AND COST CONTROL REDUCTIONS AS WELL AS THE PROCUREMENT AND PERSONNEL PROCESSES THAT WERE HAMPERING EFFICIENT PLANT OPERATION.

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WE, HERE IN THE DISTRICT, WORKED HARD TO STRUCTURE AN EQUITABLE MODEL THAT WOULD NOT ONLY MEET DISTRICT AND REGIONAL ENVIRONMENTAL REQUIREMENTS, BUT WOULD ALSO PROTECT BLUE PLAINS AS A DISTRICT ASSET. THIS HAS NOT BEEN AN EASY JOB, PARTICULARLY SINCE THERE ARE INDIVIDUALS WHO STRONGLY BELIEVE THAT THE LESS DISTRICT INVOLVEMENT AT THE PLANT THE BETTER, OR WORSE, THAT THE FACILITY HAS NO CHANCE OF EVER RUNNING EFFICIENTLY UNLESS THE DISTRICT'S ROLE IN THE GOVERNANCE, OPERATIONS AND ADMINISTRATION IS SIGNIFICANTLY DIMINISHED. THIS REASONING DEFIES LOGIC, PARTICULARLY SINCE A GREAT PORTION OF THE PLANT CURRENTLY RELIES HEAVILY ON CONTRACTOR-PROVIDED SERVICES. MOREOVER, WERE IT NOT FOR OUR ACUTE FISCAL CONDITION AND THE UNWISE DECISIONS OF THE PRIOR ADMINISTRATION TO DENY THE FORMER UTILITY (WASUA), ACCESS TO MILLIONS OF DOLLARS IN RETAINED EARNINGS, WE WOULD NOT BE FACING MANY OF THE CHALLENGES WE READ AND HEAR ABOUT TODAY.

WITH RESPECT TO THIS LATTER ISSUE, IT IS TIME TO SET A FEW THINGS STRAIGHT. THERE HAVE BEEN REPEATED CLAIMS THAT MONEY PAID

BY SUBURBAN RATEPAYERS HAD BEEN IMPROPERLY DIVERTED TO OTHER DISTRICT GOVERNMENT PURPOSES. THIS CLAIM IS SIMPLY BASELESS. THE MONEY IN THE WATER AND SEWER ENTERPRISE FUND RESERVES WAS PAID SOLELY BY DISTRICT OF COLUMBIA RETAIL CUSTOMERS. THE IMA FORMULAS UNDER WHICH THE SUBURBAN CUSTOMERS ARE CHARGED, ARE BASED ON COST RECOVERY ONLY, WITHOUT ANY ALLOWANCE FOR BUILDING RESERVES. NONE OF OUR WHOLESALE CUSTOMERS PAID ANYTHING TOWARDS THE RESERVES. THESE FUNDS WERE DERIVED FROM WATER AND SEWER CHARGES PAID BY THE RESIDENTS OF THE DISTRICT OF COLUMBIA. AS SUCH, SUBURBAN TAXPAYER MONEY WAS NOT DIVERTED EVEN TEMPORARILY TO THE GENERAL FUND.

IRRESPECTIVE OF THE MERITS OF THIS PARTICULAR POINT, THE ESSENCE OF THE PROBLEM REMAINS, AND THAT IS, CASH RESERVES HAVE NOT BEEN AVAILABLE FOR PLANT OPERATIONS. THE MAYOR HAS TAKEN CONCRETE STEPS TO ADDRESS THIS ISSUE. THE MAYOR'S FISCAL YEAR 1997 BUDGET AND MULTIYEAR PLAN PROVIDES FOR THE RESTORATION OF $83 MILLION IN EQUAL PAYMENTS OVER THE NEXT FOUR FISCAL YEARS BEGINNING ON OCTOBER 1, 1997.

OVER THE PAST 15 MONTHS, WE HAVE WORKED DILIGENTLY ON THIS AND OTHER BLUE PLAINS ISSUES, PUSHING THE ENVELOPE, SHAKING UP THE STATUS QUO, RETHINKING HOW BEST WE COULD WORK WITH THE REGION TO PROVIDE A BETTER SERVICE, TO THE EXTENT THAT THE NEW AUTHORITY IS BY FAR, THE MOST INDEPENDENT OF DISTRICT AGENCIES. HAVING MADE THESE OBSERVATIONS, LETS MOVE RIGHT TO THE LEGISLATIVE ISSUES.

LEGISLATIVE SUMMARY – THE ORIGINAL LEGISLATION

I AM TEMPTED, IN THE INTEREST OF TIME, TO SIMPLY SPELL OUT THE PROVISIONS OF THE RECENTLY PASSED EMERGENCY LEGISLATION WITHOUT ADDRESSING THE BASE PROVISIONS OF THE ORIGINAL LEGISLATION PASSED BY THE COUNCIL LAST JANUARY. THIS, HOWEVER, WOULD NOT PRESENT AN ACCURATE PICTURE OF HOW FAR WE HAVE COME ALONG IN THIS PROCESS, NOR HOW FAR WE HAVE GONE TO MEET SUBURBAN NEEDS AND CONCERNS. THE ORIGINAL LEGISLATION PROVIDED THE FOLLOWING:

- EXEMPTS THE AUTHORITY'S BUDGET FROM REVISION BY THE MAYOR AND THE CITY COUNCIL;

- EMPOWERS THE AUTHORITY TO ESTABLISH A SEPARATE PROCUREMENT AND PERSONNEL SYSTEM;
- DID NOT CHANGE OR ALTER THE TERMS OF THE INTERMUNICIPAL AGREEMENT BETWEEN BLUE PLAINS USERS;
- EMPOWERS THE AUTHORITY TO ISSUE REVENUE BONDS AND ESTABLISH, LEVY, AND COLLECT REVENUES AND FEES;
- ENABLES THE AUTHORITY TO DETERMINE WATER RATES;
- SEPARATES AUTHORITY FUNDS AND REVENUES FROM THE DISTRICT'S GENERAL FUND.

FROM A GOVERNANCE STANDPOINT, THE ORIGINAL LEGISLATION ALSO ESTABLISHED A TEN MEMBER BOARD OF DIRECTORS, FOUR OF WHICH REPRESENTED SUBURBAN CUSTOMERS. IT PROVIDED THESE MEMBERS WITH VOTING RIGHTS, INCLUDING A "SUPER MAJORITY" VOTE OF SEVEN ON BUDGET ISSUES AND ON THE HIRING OF A GENERAL MANAGER. FINALLY, IT AUTHORIZED SUBURBAN PARTICIPATION AND VOTING ON ALL GENERAL MANAGEMENT ISSUES AFFECTING JOINT USE FACILITIES, THEREBY PLACING EVERY COMPONENT OF THE DISTRICT'S WATER DISTRIBUTION AND SEWAGE SYSTEM UNDER THE CONTROL OF THE AUTHORITY--AN ENTITY COMPRISED OF MULTIPLE JURISDICTIONS WITH EXTRAORDINARY VOTING POWERS, SOME OF WHICH ARE SUPERIOR TO THE HOST JURISDICTION AND TITLE HOLDER TO THE FACILITY. THIS

LEGISLATION WAS APPROVED BY THE MAYOR, THE COUNCIL, THE CONTROL BOARD, THE SUBURBAN JURISDICTIONS, AND, FINALLY BY THE U.S. CONGRESS TWO MONTHS AGO.

ABOUT THE DISTRICT'S EMERGENCY LEGISLATION

ON MAY 30, 1996, THE MAYOR SUBMITTED ADDITIONAL LEGISLATIVE AMENDMENTS TO THE WATER AND SEWER LEGISLATION FOLLOWING CONTINUED DISCUSSIONS WITH CONGRESSIONAL STAFF AND STILL MORE NEGOTIATIONS WITH SUBURBAN CUSTOMERS. THE MAYOR STATED IN HIS LETTER TO CHAIRMAN CLARKE THAT HE WAS "...CONCERNED THAT THE DISSATISFACTION PUBLICLY EXPRESSED BY THE THREE SUBURBAN COUNTIES WITH THE SIZE AND COMPOSITION OF THE BOARD MAY MANIFEST ITSELF IN THEIR LESS THAN WHOLE-HEARTED PARTICIPATION IN THE NEW AUTHORITY." THE LETTER PROCEEDS TO OUTLINE KEY AMENDMENTS TO THE EXISTING LEGISLATION AS FOLLOWS:

- INCREASED THE SIZE OF THE AUTHORITY'S BOARD FROM 10 TO 11 MEMBERS TO RAISE THE NUMBER OF SUBURBAN BOARDMEMBERS;
- REQUIRED EIGHT VOTES FOR THE HIRING OR FIRING OF THE

GENERAL MANAGER;

- CLARIFIED THAT THE AUTHORITY IS TO COLLECT ITS REVENUES AND DISBURSE ITS EXPENSES, NOT THE MAYOR.

- FURTHER CLARIFIED THAT FUNDS RECEIVED BY THE AUTHORITY ARE NOT TO BE COMMINGLED WITH FUNDS AND ACCOUNTS OF THE DISTRICT.

- CLARIFIED PRIVATIZATION OPTIONS REGARDING OPERATIONS AND MAINTENANCE ACTIVITIES–MAKING THE PRIVATIZATION OF THESE FUNCTIONS A DECISION OF THE BOARD, NOT THE MAYOR OR COUNCIL OF THE DISTRICT OF COLUMBIA.

- SPECIFIED THAT THE AUTHORITY'S MULTIYEAR PLAN INCLUDE AT LEAST FIVE FISCAL YEARS.

- REQUIRED THE AUTHORITY TO SET ITS RATES AND OTHER CHARGES SO THAT, TOGETHER, WITH ITS OTHER REVENUES, IT WILL HAVE SUFFICIENT FUNDS TO PAY ITS COSTS, DEBT SERVICE OBLIGATIONS AND MAKE DEBT SERVICE TRANSFERS TO THE DISTRICT.

- CONDITIONS THE AUTHORITY'S ISSUANCE OF REVENUE BONDS UPON ITS CERTIFYING TO THE SATISFACTION OF THE DISTRICT OF COLUMBIA AUDITOR THAT THE AUTHORITY HAS SUFFICIENT REVENUE TO PAY ITS COSTS AND DEBT SERVICE OBLIGATIONS ON EXISTING AND PROPOSED REVENUE BONDS.

GIVEN THE EXTENSIVENESS OF THESE EMERGENCY PROVISIONS, THE DISTRICT FULLY BELIEVED THAT THE ONLY THING LEFT LEGISLATIVELY TO DO WAS TO REQUEST CONGRESS TO AMEND THE HOME RULE ACT TO ENABLE THE NEW AUTHORITY TO ISSUE REVENUE BONDS.

CONGRESS' PROPOSED AMENDMENTS TO THE HOME RULE ACT

OVER THE YEARS, WE HAVE VIEWED OUR SUBURBAN CUSTOMERS AS REGIONAL PARTNERS, NOT ADVERSARIES. WE HAVE CONTINUED TO VIEW THEM AS PARTNERS THROUGHOUT THE MORE THAN 15 MONTHS OF NEGOTIATIONS AND DISCUSSIONS WE HAVE HAD DEVELOPING THIS AUTHORITY. WE ARE DISMAYED, HOWEVER, AND EXTREMELY DISAPPOINTED THAT THE SUM TOTAL OF THESE NEGOTIATIONS HAVE APPARENTLY BEEN REDUCED TO THE CONGRESS OF THE UNITED STATES TAKING THE EXTREME POSITION OF ALTERING OUR HOME RULE CHARTER TO ACCOMMODATE SUBURBAN INTERESTS AND CONCERNS--OBVIOUSLY OVERLOOKING, DISTRICT LAWS AND PROCESSES THAT HAVE ALREADY BEEN STRETCHED TO THEIR LEGAL LIMIT.

MORE SPECIFICALLY, IT IS HIGHLY OBJECTIONABLE, LEGALLY AND OTHERWISE, FOR THE U.S. CONGRESS TO DICTATE, THROUGH THE AMENDMENTS CURRENTLY BEFORE YOU, AN EIGHT VOTE MAJORITY ON BUDGET MATTERS OF JOINT-USE FACILITIES. THE CURRENT LEGISLATION PASSED BY CONGRESS LAST APRIL, ALREADY ALLOWS FOR

A SEVEN VOTE MAJORITY ON ALL BUDGET ISSUES--A PROVISION THAT ENSURES AT LEAST ONE AFFIRMATIVE VOTE BY A SUBURBAN JURISDICTION BEFORE PASSAGE OF THE BUDGET. IN ADDITION, THE EMERGENCY LEGISLATION, AS PREVIOUSLY MENTIONED, SIMILARLY PROVIDES FOR AN ***EIGHT VOTE*** MAJORITY ON THE HIRING AND FIRING OF THE GENERAL MANAGER--ENSURING, THEREFORE, AT LEAST TWO AFFIRMATIVE SUBURBAN VOTES BEFORE A GIVEN ACTION IS TAKEN ON THIS MATTER. THROUGHOUT OUR NEGOTIATIONS, THE DISTRICT'S OFFICE OF CORPORATION COUNSEL HAS EXPRESSED STRONG MISGIVINGS OVER THE GOVERNANCE STRUCTURE OF THE AUTHORITY LEGISLATION, PARTICULARLY AS IT PERTAINS TO THE "SUPER MAJORITY" ACCOMMODATIONS.

THE MAYOR AND I, HOWEVER, WERE WILLING TO OVERRIDE THESE CONCERNS IN THE INTEREST OF REGIONAL UNITY AND PROGRESS, DECIDING-- NOTWITHSTANDING THE OBJECTIONS OF OUR LAWYERS--TO PROCEED WITH THIS GOVERNANCE PLAN ON THE BASIS OF THE BELIEF THAT THE BEST INTEREST OF THE DISTRICT COULD STILL BE PROTECTED. HOWEVER, I CANNOT CONCLUDE THAT ALLOWING A SECOND REPRESENTATIVE TO VETO THE AUTHORITY'S BUDGET WOULD

STILL BE IN THE BEST INTEREST OF THE DISTRICT ***OR THE AUTHORITY,*** FOR THAT MATTER. IT COMPLETELY CROSSES THE LINE, IN MY OPINION, AND SHOULD BE STRICKEN FROM THE PROPOSED HOME RULE ACT AMENDMENTS. MOREOVER, THIS ACTION FLIES IN THE FACE OF ALL OF THE GOOD FAITH NEGOTIATIONS WE HAVE HAD WITH THE SUBURBAN JURISDICTIONS AND THE MANY ACCOMMODATIONS WE HAVE ALREADY CONCEDED TO MAKE THIS AUTHORITY A REALITY. IT IS PATENTLY UNFAIR FOR CONGRESS TO FORCE THIS UPON THE DISTRICT WHEN WE HAVE ALREADY SURRENDERED SO MUCH. MORE, I AM CONFIDENT, THAN MOST JURISDICTIONS--INCLUDING OUR SUBURBAN NEIGHBORS--WOULD CONCEDE WERE THE TABLES REVERSED.

PROPOSED BONDING AMENDMENTS

APART FROM THIS GOVERNANCE ISSUE, THE HOME RULE AMENDMENTS INTRODUCED BY CONGRESSMAN DAVIS CONTAIN NUMEROUS DEFICIENCIES AND AMBIGUITIES THAT WILL HAMPER BOTH THE NEW AUTHORITY'S ABILITY TO MARKET ITS BONDS AS WELL AS THE DISTRICT'S FUTURE ABILITY TO BORROW. PLEASE CONSIDER THE FOLLOWING CONCERNS:

PROPOSAL SETS FORTH NEW TERMS FOR THE TYPE OF FACILITIES FOR WHICH REVENUE BONDS MAY BE ISSUED THAT DO NOT APPEAR TO HAVE HISTORICAL INDUSTRY ACCEPTANCE AND MAY BE TOO LIMITING. SPECIFICALLY, THE DESCRIPTIONS UTILIZED THROUGHOUT THE DRAFT LEGISLATION, OF THE TYPES OF FACILITIES FOR WHICH REVENUE BONDS MAY BE ISSUED IDENTIFIED AS: "WATER DISTRIBUTION" AND, "WASTEWATER TREATMENT AND TRANSMISSION FACILITIES" --IS TOO RESTRICTIVE. SUCH TERMS DO NOT SUBSUME WITHIN THEIR MEANINGS, "OBTAINING AND TREATMENT OF WATER," OR THE "STORAGE" OF WASTEWATER, OR HANDLING OF "STORM DRAINAGE" THE EFFECT WOULD RESTRICT ISSUING REVENUE BONDS FOR CRITICAL WASTEWATER AND WATER DISTRIBUTION PURPOSES. THE DISTRICT'S ALTERNATIVE LEGISLATION SUBMITTED TO CONGRESSIONAL STAFF CONTAINS BROADER TERMINOLOGY WHICH ENCOMPASSES THESE ACTIVITIES.

PROPOSED AMENDMENTS FAIL TO EMPOWER THE AUTHORITY TO REFINANCE PROJECTS. THIS OMISSION IS CRITICAL AND COULD GREATLY HAMPER THE NEW AUTHORITY'S ABILITY TO CARRY OUT ITS FUNCTIONS. IN ADDITION, BY INCLUDING SO MUCH OF THE

AUTHORITY'S BOND ISSUING POWER IN NEW SUBSECTION H, CONGRESSMAN DAVIS' BILL EXCLUDES GENERIC REVENUE BOND PROVISIONS CONTAINED IN SECTIONS 490 OF THE HOME RULE ACT. CONSEQUENTLY THOSE HOME RULE ACT PROVISIONS WOULD NOT APPLY.

THE DAVIS BILL, AS CURRENTLY PROPOSED, DOES NOT REMOVE FROM THE DISTRICT'S DEBT CEILING COMPUTATION, THAT PORTION OF THE DISTRICT'S GENERAL OBLIGATION DEBT ISSUED PRIOR TO OCTOBER 1, 1996 ATTRIBUTABLE TO WATER AND SEWER CAPITAL PROJECTS. PURSUANT TO THE CURRENT WATER AND SEWER AUTHORITY LEGISLATION, ALL REVENUES OF THE AUTHORITY ARE EXCLUDED FROM THE GENERAL FUND AND, AS SUCH, THE REVENUES ARE ALSO EXCLUDED FROM THE REVENUE CALCULATION FOR THE DISTRICT'S DEBT LIMIT. THE LEGISLATION ALSO PROVIDES FOR A PAYMENT TO THE DISTRICT FROM THE AUTHORITY TO FUND THE DEBT SERVICE ATTRIBUTABLE TO GENERAL OBLIGATION BONDS ISSUED TO FINANCE WATER AND SEWER CAPITAL IMPROVEMENTS. AS SUCH, THE DEBT SERVICE ON OUTSTANDING GENERAL OBLIGATION BONDS OF THE DISTRICT ATTRIBUTABLE TO WATER AND SEWER ARE SELF-SUPPORTING.

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THEREFORE, IT IS REASONABLE TO CONCLUDE THAT THIS DEBT SERVICE SHOULD ALSO BE EXCLUDED FROM THE DEBT CEILING CALCULATION.

IN CONVERSATIONS WITH THE SUBCOMMITTEE STAFF, IT IS OUR UNDERSTANDING THAT IT IS THE INTENT OF THE COMMITTEE TO EFFECTUATE NOT ONLY THE EXCLUSION OF THE REVENUES FROM THE DEBT CEILING, BUT ALSO THE DEBT SERVICE. AS PRESENTLY WRITTEN, THE PROPOSED LEGISLATION EXCLUDES THE GROSS REVENUES OF THE AUTHORITY, INCLUDES THE PAYMENT FROM THE AUTHORITY, BUT ALSO INCLUDES THE DEBT SERVICE ON THE BONDS IN THE DEBT SERVICE CALCULATION. WE BELIEVE A MORE EFFICIENT PROCESS WOULD BE TO EXCLUDE ALL REVENUES (INCLUDING THE PAYMENT FROM THE AUTHORITY), FROM THE REVENUES AND THE DEBT SERVICE ON WATER AND SEWER RELATED BONDS. WE HAVE INCLUDED AS AN EXHIBIT, THE IMPACT OF THE VARIOUS CALCULATIONS ON THE DISTRICT'S DEBT ISSUANCE CAPACITY. WE BELIEVE THE CALCULATION UNDER THE HEADING "DISTRICT PROPOSED" ACCOMPLISHES THE INTENT OF THE COMMITTEE AND THE DISTRICT.

AS YOU KNOW, THE DISTRICT IS NOT REQUIRING THE NEW AUTHORITY

TO DEFEASE, REPAY OR ACCEPT LEGAL RESPONSIBILITY FOR THE WASUA-RELATED PORTION OF THE OLD GENERAL OBLIGATION DEBT, ALTHOUGH IT WOULD BE HIGHLY ADVANTAGEOUS FOR THE DISTRICT TO DO SO. HOWEVER, THE DISTRICT CANNOT ALSO BE ASKED TO COMPROMISE ITS FUTURE ABILITY TO BORROW BECAUSE OF ITS DESIRE FOR THE AUTHORITY TO ENTER THE BOND MARKET IN THE BEST POSSIBLE POSITION. THE DISTRICT MUST GENERATE $14 DOLLARS OF REVENUE FOR DOLLAR OF WASUA DEBT THAT REMAINS IN THE DISTRICT'S DEBT SERVICE COMPUTATION. CLEARLY, THIS IS TOO GREAT A BURDEN FOR THE DISTRICT. WE LOOK FORWARD TO WORKING WITH YOU IN MODIFYING THIS LANGUAGE IN THE DAYS AHEAD.

CONCLUSION

IN SPITE OF THE PROLONGED NEGOTIATION PROCESS, I AM PROUD TO SAY THAT THE DISTRICT HAS BEEN BUSY GOING ABOUT THE TASK OF ENSURING THAT COME OCTOBER 1ST, THE NEW AUTHORITY WILL HAVE ITS BOARD OF DIRECTORS ESTABLISHED, EMPLOYEES TRANSFERRED AND FUNDS COLLECTED BY THE AUTHORITY AND ACCOUNTED FOR IN A COMPLETELY SEPARATE SYSTEM FROM THE DISTRICT. WE HAVE

TREMENDOUS CONFIDENCE THAT THE NEW AUTHORITY WILL SUCCEED AND THAT OUR JURISDICTIONAL INTERESTS WHICH SEEM SO WIDE AND DISPARATE NOW, WILL INDEED, BECOME ONE COMMON GOAL.

OUR COMMITMENT AND SUPPORT OF THE NEW AUTHORITY HAS BEEN UNWAVERING. IT IS SYMBOLIZES THE KIND OF ACHIEVEMENTS WE MUST MAKE AS WE TRANSFORM THE DISTRICT GOVERNMENT INTO A LEAN, BETTER MANAGED, MORE COMPETITIVE ORGANIZATION. I AM PARTICULARLY APPRECIATIVE OF THE SUPPORT WE HAVE RECEIVED FROM THE MAYOR, COUNCILMEMBER THOMAS, THE CONTROL BOARD AND CONGRESSWOMAN NORTON ON THIS ISSUE. FINALLY, I AGAIN EXTEND MY FULL COOPERATION IN THE WEEKS AHEAD TO OUR SUBURBAN NEIGHBORS AS WE FORGE AHEAD ONTO UNCHARTED TERRITORY. THANK YOU AGAIN FOR ALLOWING ME THIS OPPORTUNITY. I AM AVAILABLE TO ANSWER ANY QUESTIONS YOU MIGHT HAVE.

Mr. DAVIS. Mr. Rogers, I think it's important that you get your full say. As you know, we have not introduced a bill yet. We've sent a draft out, because we want people to react to that. That way, when the bill comes, generally it's a little bit easier to correct. So there is no bill yet, and we wanted your input before we do that. Most of the issues you talked about, we're going to work with you and make the corrections.

Mr. ROGERS. OK.

Mr. DAVIS. You've made some very substantive comments.

Mr. King, before I swear you in, I just want to—Mr. Gutknecht has to leave for a minute; I wanted to give him an opportunity to ask Mr. Rogers just a couple questions or clarifications, and then we'll move right to you and swear you in. Gentleman from Minnesota.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I just had two fairly quick questions, just for clarifications. First of all, Mr. Rogers, in your testimony you said—you chose your words pretty carefully, but I want to make sure that I understand exactly what happened. You said you did not divert suburban funds for general fund use.

Mr. ROGERS. Right.

Mr. GUTKNECHT. But there were funds diverted from the water accounts for use?

Mr. ROGERS. That's correct.

Mr. GUTKNECHT. OK. I just want to make that clear.

Mr. ROGERS. Yes.

Mr. GUTKNECHT. And the second thing, and I think you have raised an interesting question, I think one that this subcommittee needs to take a very careful look at, and that is that at least one of the suburban parties to this agreement, in your estimation, did not bargain in good faith, and I wonder if you could be a little more specific about that, just for my purposes here.

Mr. ROGERS. Well, let me just say that we've worked with our suburban neighbors. I think everyone came to the table with a list of issues and we talked about those and we went as far as we could go. But the District is in a very strange situation, because we can negotiate and think we've come to closure, but because of where we sit, the neighbors have the option of going around another way or expressing another interest. And we're here with a voting representative that happens to also, you know, represent one of the neighbors, and, you know, Mr. Chairman, that's not to be offensive at all, but that's just the reality of the District of Columbia.

Certainly it would be better——

Mr. DAVIS. Of course, Ms. Norton has a full vote on this committee as well.

Mr. ROGERS. I understand.

Mr. DAVIS. She's not a disinterested party any more than I am.

Mr. ROGERS. I understand. I understand.

Mr. GUTKNECHT. But I am a disinterested party.

Mr. ROGERS. Yes. But the fact remains——

Mr. DAVIS. You're talking to the neutral guy up here right now.

Mr. ROGERS. The fact remains, Mr. Gutknecht, that we can negotiate and think we've come to closure, but because of the legislative process that the District has to go through, that may not be so.

Mr. GUTKNECHT. OK.

Mr. ROGERS. And I tell you, I mean even with our labor organizations, when someone sits at the table with me, I know they have a right to go to city council, but, when we reach agreement, we reach agreement, and that's the basis of which we both go out and advocate the approval, you know, through the approval process.

Mr. GUTKNECHT. But, in short, your feeling was that you had an agreement and then at least one party to the agreement said that they wanted one more sweetener in the deal?

Mr. ROGERS. Well, let me say I don't know if it was one party. I mean I think that in the discussions, we looked at the suburban interest; they all expressed an interest. And some had stronger views, you know, than others. And we really bent over backward to try to, you know, accommodate everyone's views. But on this, you know, eight vote majority, we thought we had put that to rest. And we did the eight votes. And let me just clarify this: We did the eight votes on the general manager, you know, hiring and firing of the general manager, because we felt that the general manager is going to have to have the confidence not just of the District but, you know, of the total region. And that's one place where we could go. And if the general manager candidate can't get eight votes, then he doesn't deserve to be, you know, the general manager of this facility, because—and that was a concession that we made.

But going the further distance, as I pointed out, we've already pushed the envelope beyond what our corporation counsel has recommended. And it just gets down to this: Were it not for the option of coming to Congress, if our legislative process, you know, stopped with the District of Columbia, if we were truly an independent, sovereign community, then the other jurisdictions would have to respect that sovereignty and independence, and would have to negotiate with us, and would have to reach a deal with the District of Columbia, if there was going to be some arrangement. But because of the unique nature, you know, we understand that. But we are raising this as a concern.

Mr. GUTKNECHT. Fair enough. Thank you.

Mr. DAVIS. Thank you very much. Let me move to Mr. King, and then I'll have questions for both of you.

[Witness sworn.]

Mr. KING. Good morning——

Mr. DAVIS. Thanks for being here. I appreciate it.

Mr. KING. Chairman Davis and members of the District of Columbia Subcommittee of the Committee on Government Reform and Oversight. My name is Larry King, and I'm the director of the D.C. Department of Public Works. And I want to thank you for inviting me here to testify before the subcommittee on the creation of the D.C. Water and Sewer Authority and provide my views regarding the pending amendments to the D.C. Self-Government Governmental Reorganization Act.

My city administrator has relayed, I think quite adequately, the District's position as it relates to those amendments. And I would just like to re-emphasize that while a lot of the discussion that we've had surrounding the creation of the D.C. Water and Sewer Authority has focused on the operations of the Blue Plains Wastewater Treatment Plant, this facility, while important, represents only a portion of the responsibilities of the new water and

sewer authority. In addition to managing the Nation's largest and most advanced wastewater treatment plant, the new authority is also responsible for insuring delivery of fresh water to over 550,000 District of Columbia residents and nearly 700,000 employees and visitors who occupy the District every day.

The new Authority is also responsible for operating over 1,800 miles of sanitary storm and combined sewers to insure a safe and sanitary environment. A lot of the other comments Mr. Rogers alluded to. We just wanted to ensure that we weren't just focusing this discussion on the Blue Plains Wastewater Treatment Plant, but we do have responsibilities to deliver water and also carry the sewage away and keep those facilities maintained, which are very important to the environment of the community.

I will stop there and assist Mr. Rogers in answering any questions that you may have.

Mr. DAVIS. Thank you.

First of all, Michael, let me again, as I said in the opening remarks, thank you for your leadership and efforts in this. I don't think there's any attempt to roll anybody on this. This is draft legislation and we want everybody to get it and come back. After a first round of negotiations, we've gone through a second round. Wouldn't you agree we've substantially improved it the second time around?

Mr. ROGERS. Yes, yes, yes, yes.

Mr. DAVIS. And we will come back and try to take all the comments to heart as we craft the bill. Yet, in the end, I think we'll have everybody's support up here. So this is a long process, but it's an important process, and important that everybody come away from this I think feeling good about the outcome, not necessarily the negotiations; that's always a little tough.

However, I want to understand one thing, because there have been a lot of representations that I hear going back and forth about the money that District ratepayers have paid in and the money that suburban ratepayers have paid in to Blue Plains. When that money goes in now, is it put in separate funds?

Mr. ROGERS. Now it does, yes.

Mr. DAVIS. When did that start?

Mr. KING. About a month ago.

Mr. ROGERS. About a month ago, yes.

Mr. DAVIS. OK. Let's take a look at last year, when this happened. Money was paid into the system from suburban ratepayers, from D.C. ratepayers, and it basically went in the same fund; it was commingled, wasn't it?

Mr. KING. I think the difference there is that, for the most part, at least a large portion of what suburban customers pay was reimbursement to the District for expenses. We bill them on what we've expended, and they pay a portion of that. And they pay a portion in advance, so it's not—the money doesn't go into the pot. It's basically replenishing the pot of expenses paid.

Mr. DAVIS. Let me ask this: As the money is paid in, there's no trail on the money to follow where the District consumers pay, where the suburban jurisdictions pay; it really does go and get commingled, doesn't it?

Mr. ROGERS. No. It's all——

Mr. DAVIS. Yes.

Mr. ROGERS. Yes, it goes into the general fund, but it's accounted for separately.

Mr. KING. It's accounted for separately. In the books——

Mr. DAVIS. It's accounted for, because it——

Mr. KING. The books show where the money comes from, the books show where the money goes.

Mr. DAVIS. But the money is paid in and commingled isn't—you don't pay one set of money; it can only go to certain areas and the other can go only to certain areas; is that the——

Mr. ROGERS. No. But the important point, Mr. Chairman, is that these are reimbursements. The money is already due. So once the service has been provided and the payments are due, then it goes through the normal District process. So I mean, but it is for service provided.

Mr. DAVIS. Yes. I don't want to go through the backlog, but I think the reality is the money is fungible in this, wherever it comes from, whether it's from suburban ratepayers, District ratepayers, reimbursement, or however you put it. The fact is, as you admitted, Mr. Rogers, and I think as the record clearly shows, some of this money was not put back into Blue Plains, it was extended into the city for other purposes.

Mr. ROGERS. My testimony stated, I think very clearly, that we acknowledge the fact that reserves were not returned to Blue Plains and that they should have been. But what we also stated is that the suburban payments—or payments by the suburban jurisdictions do not go into the reserves anyway. So we were not diverting money paid by suburban jurisdictions. The money——

Mr. DAVIS. Well, technically, you may be right, but the money is very fungible, so there is no trace, since it's all going in.

Mr. ROGERS. That technicality is more than a technicality; it's a reality, and it's a very important point to clarify what has been stated over and over again about the District's use of Blue Plains money. What we have said, for the record again, that the money that went in the general fund, the money was—the reserves, that went into the reserve fund, was District ratepayer money. So should it have been done? No. Not even for District ratepayer money should the reserves been held from Blue Plains, but that's what it was, not suburban money.

Mr. DAVIS. Well, I think we'll hear some testimony with a little different perspective on that.

Mr. ROGERS. I understand that. But we have the books, Mr. Chairman, nobody else does. So, you know, we——

Mr. DAVIS. Well, that's what has made everybody nervous.

Mr. ROGERS. I understand that too, but——

Mr. DAVIS. I just want you to——

Mr. ROGERS. What this is about, Mr. Chairman, what this bill is about is about moving forward.

Mr. DAVIS. Exactly.

Mr. ROGERS. It's about moving forward.

Mr. DAVIS. And we wouldn't be moving forward, Michael, if it weren't for your efforts. Let me just say this: I can understand how you feel in getting burned here, because you have really, on your initiative, more than anybody else in the city, have tried to move

ahead and put this behind us, and move it away, everybody can leave, and then people try to jump three steps ahead of you, and I understand that. And we don't want to—that shouldn't be punished; the old saying that "No good deed goes unpunished," we're not trying to be there. Still I want to frame this perspective that I think you've done more to try to bring the parties back together, which was really quite divided, if you go back a year and a half ago. So I agree, we need to keep moving forward on this and to put it in the appropriate perspective.

Mr. ROGERS. Right.

Mr. DAVIS. But I also want to make sure I've got a suburban District that—that they have a little bit different perspective on this in terms of the past, and that has laid the groundwork, I think, for some of the areas we move in the future.

I'm going to right now stop my questioning and pass the baton to the ranking member, Ms. Norton for any statement she would like to make and then for Representative Wynn who is here as well, whom you've asked to sit in today, for any statements they'd like to make, and then I'll hand it over to them for appropriate questions.

Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. I apologize that there was an event that I could not avoid and, therefore, I was tardy to this hearing. I appreciate that you're holding this hearing. And I want to say to the jurisdictions—I unanimously sent in my formal statement——

Mr. DAVIS. Without objection——

Ms. NORTON. And I want to simply say to the jurisdictions that I am proud of the way they have negotiated on a very difficult matter, with the District conceding the problem, and yet negotiating for a fair deal. And the fact that these matters have been negotiated without congressional intervention is very important, because these jurisdictions are going to have to live together. And there are going to be disagreements here and there that arise. This is not big daddy up here, whether in female or male garb, and we do not intend to be in the business of settling disputes that arise. Everybody is grown up down there, and you've already shown that even given how difficult this issue was, because, in fact, the suburban jurisdictions had a legitimate gripe, a very legitimate gripe, that you were able together to work it out. I hate to see any issue come up here, like eight votes. Straighten it out. If that issue was brought up, the law on it, you couldn't deal with, I thoroughly resent that anybody would ask for the Congress to deal with it. It would be a violation of Home Rule. And, in fact, if there's an issue down there that's still outstanding, I think the parties should go back.

Do I understand that this issue about eight votes—I don't have any view on that, by the way. And I am not defending whatever position the District has taken. I just want to know was that issue thoroughly discussed down there? Why was it not settled down there? What was the District's objection?

Mr. ROGERS. Yes.

Ms. NORTON. And why is it the major outstanding issue?

Mr. ROGERS. Let me say that, yes, the issue of a super majority——

Ms. NORTON. You're talking about the budget now?

Mr. ROGERS. Well, it started with an issue of super majority on quorum, super majority on a number of issues. And the first request was for eight votes, a two-vote super majority, which would mean eight. Now, the Mayor made the concession that he understood the position, and that, even over the objection of the corporation counsel, he agreed that we would go seven votes, you know, on the budget, seven votes super majority on the budget, requiring at least one vote from suburban representatives on the authority. And the reason that corporation counsel is concerned about the eight-vote super majority or a majority, one vote even on this, is that this is the District authority, on which—a very unique entity. This is an authority created under District law, an authority on which, through accommodation, and I think a very practical accommodation, we include suburban representation. We call them "other participating jurisdictions." And the concern of corporation counsel is that to have a—that kind of majority on a—in which suburban jurisdictions are outcome determinative on everything, all right, raises a question whether it's a real District authority. And we listened to that. We pushed the envelope as far as we could. We think that, on the general manager, where we made the concession on eight votes, that that is a practical, you know, solution on that. But on the vote—on the budget, that goes to the very heart of the direction of the authority. And it is a District authority, and it is created under District laws. And there's a concern legally whether someone may object, you know, to that kind of distribution of power in the end. And let me let corporation counsel—yeah. I have my lawyer with me, so—Maria Holleran Rivera, who is the corporation counsel, who is——

Mr. DAVIS. Are you going to ask her to testify, or are you just going to ask for advice, because otherwise I'll swear her in.

Mr. ROGERS. Yes, swear her in. She needs to——

Mr. DAVIS. We're not going to swear you out. Do you want to just raise your hand.

[Witness sworn.]

Mr. DAVIS. Thank you. Welcome.

Ms. RIVERA. Where have we come to where you even have to swear lawyers in?

Just simply state that the District has, in our opinion, gone as far as it can legally go. And if this goes further, I think that the—legal problems will be created for the Authority, which we believe would——

Ms. NORTON. That is very conclusionary. And I recognize that you don't want to give a——

Ms. RIVERA. It's very difficult to——

Ms. NORTON. You don't want to give ideas for how to sue the District on this, but to say that there are legal problems only is not to leave us with very much——

Ms. RIVERA. Well——

Mr. DAVIS. Can I just interrupt there, just to clarify.

Mr. NORTON. Mr. Chairman, you want me to yield?

Mr. DAVIS. Yes, if you would yield for just a second. I mean, if I'm convinced that it causes real legal problems, I think Mr. Wynn would say the same thing, and not some self-serving effort here, we would be concerned about that. We don't want to undermine your authority, whether it's selling bonds, whether it's contracting, whether it is—in terms of how this relates. That's a very solid legal argument that's going to carry weight. But to just say, Well, we think there are problems, isn't too convincing. That's all we're trying to say.

Ms. NORTON. Let me suggest this, Mr. Chairman. The District government, in part because of the way its laws are written I might say, gets sued at the drop of a hat, you know if people come to work even. And the District hasn't protected itself against such lawsuits and needs to do more. But I think you may be hearing some of the resonance of lawyers who have been sued for everything except the time of day.

I do believe that you ought to—that you might consider submitting a legal memorandum to the chairman, which I would ask him to share with me, so that we could understand those legal problems without inviting——

Mr. DAVIS. We could keep those in camera if you'd like, I mean in——

Ms. RIVERA. We would appreciate that, and we'd be happy——

Mr. DAVIS. Well, if you could send it to Ms. Norton, I will look at it with her along with Mr. Wynn. We'll be happy to look at it from that perspective and keep it in confidence. But I obviously don't want to undermine the city. We're not trying to do that. We have to recognize that a majority use is suburban use, and there are some legitimate issues. So if you can do that, we'd appreciate it.

Mr. ROGERS. We appreciate that, Mr. Chairman. Let me say—I mean just to point out; we've come a long way. We come from a situation now where, under the IMA agreement, there is no vote. It is a District facility; we can operate it as we damn well please, except for your oversight, OK. But we sit in a Blue Plains CAO Committee, and there's a technical committee; we've been doing this for years. There is no formal vote. So we've come from no vote to meaningful vote on a board. On our own we proposed it.

This issue is simply about, it appears to me, an absence of the District's semblance of sovereignty as a separate government. As I said, Ms. Norton, before you came in: Were it not for the Congress, if the District was truly an independent jurisdiction, a county in some other one of the two states, and we were proposing——

Mr. DAVIS. There is a proposal to make you part of one of the two States.

Mr. WYNN. Let's table that, Mr. Chairman.

Mr. ROGERS. Thank you, Mr. Wynn. But if we were a county, then what the jurisdictions would have to do is reach agreement with each other, and it would stop there. It would not be the option of coming to the Congress. Those who sit at the table would have to negotiate in good faith and reach agreement or there would be no agreement. This is a process where we've spent 15 months negotiating and talking and reaching accommodation. And just about when we think we have it done, it slips away again. At some point,

the ball has got to stop moving, and we've got to say, This is it. This is what we all buy into. This is in the best interest of the region and it also protects the interest of the citizens of the District of Columbia. We just want the ball to stop moving. And we think that the ball should stop moving because those who are going to sit at the table and make decisions about the future of this authority come to agreement on its structure and governance.

Ms. NORTON. Well, again, I congratulate the parties. And I think that the pattern that has been used up until now, reaching agreement, is the only one that will work, because there will be a bad taste in everybody's mouth if the Congress imposes anything. And the chairman has been very fair. He has throughout encouraged the parties to work it out; he really has, and has not tried to intervene into this process. And I appreciate the way in which he has respected home rule. And I think if we want this process to continue, the parties need to work harder on this one issue. You've worked so well on so many others that are similar.

Thank you, Mr. Chairman.

Mr. DAVIS. Thank you. Let me now recognize the gentleman from Maryland, Mr. Wynn. Al, thanks for being here with us today. I know you have a great interest in this.

STATEMENT OF HON. ALBERT R. WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. Well, I want to first thank you, Mr. Chairman, for your hospitality in inviting me to participate. You've been very gracious throughout the process, and not only that, I want to thank you for your leadership, because you've been very fair-minded throughout and operated in the spirit of cooperation. And so I'm delighted to be here. I'd like to begin by welcoming two of my good friends, the CAO's from jurisdictions that I represent. We have Mr. Howard Stone, the CAO from Prince Georges County, representing County Executive Wayne Curry. And we have Mr. Bruce Romer from Montgomery County, representing County Executive Doug Duncan, and we are delighted to have them here. Gentlemen, thank you for coming.

I will be very brief. I think tremendous progress has been made in a true spirit of cooperation between the jurisdictions. And it is my hope that there are no permanent sticky points that would prevent us from going forward with an independent authority that would have the bonding capability to meet the capital needs of the Blue Plains facility. This is a very important issue, because, in point of fact, the suburban jurisdictions represent the majority of the flows into Blue Plains. We make significant contributions. Prince Georges and Montgomery Counties contribute about $40 million per year for operating and maintenance costs, and our capital commitment, thus far, in Blue Plains is about $346 million. So, in suburban jurisdictions, we have a very great interest in the facility and in its success.

I think we're all well aware the Environmental Protection Agency has indicated that they are concerned about the state of Blue Plains and the old, inadequate equipment in facilities that could release untreated sewage, contaminating the Potomac River, which would impact our entire region. As a result of that, I think the con-

cept of a District authority that is independent with a bonding authority makes a great deal of sense. It is not the ultimate solution. I think certainly all of us in the metropolitan region believe that a true regional interstate compact, if you will, would be the ultimate solution. But, as an interim measure, I think this makes a great deal of sense, and I'm certainly pleased to support the cooperative efforts of the jurisdictions.

I do want to ask one question, Mr. Rogers, with regard to the exercise of the bonding authority that's been granted, and that is with respect to the timeframe. Specifically how quickly, assuming we don't run into any permanent sticky points over the super majority or other issues, could we anticipate moving into the bond market, acquiring the necessary funds to begin making the improvements that we'd all like to see? Mr. King, excuse me.

Mr. KING. Well, may I?

Mr. DAVIS. Yes.

Mr. KING. I've got two things. First of all, you made some comments about the Environmental Protection Agency's conclusion about the plant releasing untreated sewage, which I think is incorrect.

Mr. WYNN. Well, what I—they expressed concern about the possibility.

Mr. KING. Well, we—yes. Well, any time you operate a wastewater treatment plant, there is a possibility, and that's why you operate it to the strict standards, and we have not. Now, the other thing we talked about is having capital improvement, which are ongoing now, and have continued to be ongoing. I think what we've had, as the rest of the District has had in the last year or so, are financial difficulties, which kept us from doing certain things exactly where we wanted to do them. If you talk to the Environmental Protection Agency now, they will—we will say that they have—we've made some great improvements in terms of those things they had some concerns about. And so I just don't want it on the record that we have violated the law, and we are operating the plant in a proper manner. I just wanted to make sure——

Mr. WYNN. In view of your comment, let me clarify.

Mr. KING. Yes. And I had a second one too.

Mr. WYNN. Oh. Sure.

Mr. KING. Well, you talk about this as a good interim measure and you talk about the fact that we'd like to see a regional authority, and I don't understand how we pick a District facility and want to make that a regional facility, when, Mr. Wynn, in your jurisdiction, you send almost all of your flow to us, because you have not built facilities in your own jurisdiction to take care of your own wastewater treatment. So what we're doing is providing a service to Maryland and counties in Virginia, because we built a much larger facility in the District, on District land, to help accommodate you, so you can have the growth that you've enjoyed, and enjoy the tax revenues that you'll enjoy from that growth, and not have to have a wastewater treatment plant in your facility. We have taken that burden. So I kind of have a little problem with wanting to take our facility and make it a regional facility, unless we're talking about taking all the facilities in the region and putting them

together and talk about some kind of regional facility that includes more than just ours.

But, two points, before I get yanked here, two points I want to make clear is that we have not violated the permit, and, second, that this is a District facility.

Mr. ROGERS. The two points that the director made is that we have not violated our permits and this is a district facility. With respect to the other comments, I'm sure the record will reflect that, and I appreciate the director's contribution now.

To Mr. Wynn's question about when we would be ready to issue bonds for the new facility; well, we've got a long way to go. This is something that the new board will do. The board should be up and operating within the next 30 to 45 days. And then we've got to define what the capital assets are. We've got to go through all of the due diligence of what this new entity is and what it has that will be required, you know, by the analysts in the market before we can go to the market. So the bottom line answer is that it probably will happen sometime in fiscal year 1997; we hope so. But we have to do it right; we have to go through the process of preparing to go to the buyer market. And we can't do that until we get through this hurdle and until we have authority, of course, to issue revenue bonds. But there are a lot of preparatory steps, Mr. Wynn.

Mr. WYNN. Well, thank you. I appreciate that. I did want to clarify: I didn't say that you had released or you were going to; I said EPA raised the issue. I believe it was Mr. McCabe, who is the regional director, raised the issue that there was a possibility that sewage could be released. With respect to the regional compact, I'll save that for another day.

Mr. ROGERS. All right. Thank you, Mr. Wynn.

Mr. DAVIS. Any other questions?

Mr. ROGERS. Thank you very much.

Mr. DAVIS. Oh, thank you very much. Let me now introduce a member of the full committee——

Ms. NORTON. Could I just say to Mr. Wynn——

Mr. DAVIS. Oh, sure.

Ms. NORTON [continuing]. I'd exchange regional compact for commuter tracks.

Mr. WYNN. I don't think that's terribly likely, but I'm willing to consider some sort of abatement of Federal taxes.

Ms. NORTON. All right. I'd like that. I would like that.

Mr. WYNN. I'm reasonable.

Ms. NORTON. OK.

Mr. DAVIS. Let me recognize the young lady from Montgomery County, Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. I really am very pleased at the fact that you're calling this important hearing and that I can be here questioning and listening and participating with the witnesses that we have here. I think it's a very important issue, obviously, Blue Plains Wastewater Treatment Plant. The effective operation of Blue Plains is critical to my constituents in Montgomery County, as it is indeed to the region. Indeed the efficient operation of Blue Plains is of great importance to the people in the District of Columbia, Prince Georges County, and Virginia. They all have a significant stake in this facility.

Montgomery County and Prince Georges County together account for more than 39 percent of the sewage that's processed at Blue Plains. Montgomery County is almost totally dependent on Blue Plains, with 95 percent of its sewage going to the District plant. The county also provides its proportional share of funding for the operations of the plant. And I see here, on our witness list, Bruce Romer, who will be representing Montgomery County in testimony before this subcommittee.

I believe that the creation of a regional authority to govern the operation of the Blue Plains Wastewater Treatment Plant will address the common concerns of the area jurisdictions. It's my understanding that the District law, which established such an authority, was recently amended to include greater representation by suburban jurisdictions, and I certainly do welcome that. Under the amended legislation, Montgomery County now will have two representatives on the authority's board of directors.

We're all interested in making sure that Blue Plains operates in an environmentally healthy manner. I am also cognizant of the report that was alluded to, the EPA report, which has its dire warning as part of it. We all want clean water to drink, want to ensure the preservation of the Potomac River, the Chesapeake Bay. The District and the suburban jurisdictions have a shared interest in working together to make Blue Plains Wastewater Treatment Plant an effective facility. And I know that we've made some strides, but we still have a long way to go. And I think it is a complex issue, and I think it's important that we all do work together.

I wonder if I might just ask one question, and I didn't hear the earlier testimonies, but I've certainly met with Mr. King and Mr. Rogers. I've got great respect for the work that you do. I wondered about how you think the interests of the jurisdiction can be protected? Perhaps you might want to comment on that.

Mr. ROGERS. Well, we've provided a structure here that assures the interest of all users being protected. There are votes on the board, on the governing body. We have provided a one vote super majority, if you will, on the adoption of the budget. The budget will be the principal document in which the suburban users will know the management plan and the direction of the facility for the next year. And it would require at least one vote from a suburban representative. If we are—if the budget—I can't conceive of a scenario where the budget would not—if the budget did not cover the interest of suburban—one suburban user, then it would not cover the interest of the other. I think it's the treatment as a group, as users of the facility. So each user will be able to see what their obligations are for the coming year, based on the adoption of a budget and the programs. So it's there, at the board of directors, voting on the budget and voting on the management plan and the direction of the facility for the coming year, that the suburban interest or the interest in the legislation, other participating jurisdictions. I hate this dichotomy, you know. Suburban is better than foreign jurisdictions, but—all right.

Mr. DAVIS. Yes, it is.

Mr. ROGERS. So we are—you know, we think we can do that. Plus, you know, we make the decision, in this, in putting forward this legislation, not to tamper with the intermunicipal agreement.

The IMA agreement remains intact. That really defines, you know, what the—how the interest will be protected. So even though there is a new authority, there is also an IMA agreement, OK. So I think it's an opportunity for this region, you know, to come together on this very important issue.

Now, certainly, picking up on Mr. King's point about the regional authority, if—I'm certain, if someone thought that somehow a regional authority could be created now, by the stroke of a pen, that that would be the proposal on the table and we'd be responding to that and not what we have done. The proposed District Water and Sewer Authority was the most expedient way to handle the pressing concerns about the operations and management of this important facility that serves this region. So we decided to do it under District law and to put in place a structure that would insure that regional representation was at the table and that the suburban interest would also be protected.

Mrs. MORELLA. That's critically important to some of the concerns we've had, given, in the past, to insure that money isn't diverted, you know, to other sources, to make sure that there is strict accounting, to make sure that the concept of territoriality is not overwhelming, in terms of where it is located, but rather that the interest of those people who are participating are fair and equitably assured for the future. And I feel that we'll be developing that further as we go along too.

Mr. ROGERS. And let me say, if I may, that we've worked with—I have worked with a lot of counterparts in Montgomery and Prince Georges and Fairfax to negotiate this arrangement. I believe that once the board is formed, and my counterparts will be representing their jurisdictions on the board, that once we get to work, its down to we're addressing these issues, I think it would be one vote. I think when we come around the table and get about the business of what we do best, and that is the making management decisions about the direction of this facility, I think that the fears and concerns and, frankly, the mistrust that has characterized the relationship of the suburban jurisdictions toward the District in the past, and maybe, to some extent, now, will go away. I think it's a matter of getting to work, so we can make this new entity operational and viable and strong, so that, in the end, the facility fulfills its objective, and that is providing safe water to this region.

Mrs. MORELLA. I like that attitude. I hope—about it, but I look forward to hearing further testimony on it.

Ms. RIVERA. If you want to add any——

Mr. KING. Just that—this Board and its whole focus would be on water and wastewater treatment. And so, you know, not having to worry about other things will keep it focused and keep the interest of the entire area, the region, including the District, at the utmost.

Mrs. MORELLA. Thank you. Thank you, Mr. Chairman. And, again, thank you.

Mr. DAVIS. Thank you. There are a couple questions I need to get in the record. First of all, Mr. Rogers, we readily can see that the suburban ratepayers have made substantial contributions toward that infrastructure, the additions, the renovations, and the operating expenses that have kept it going. This study that we'll be look-

ing at, will we start taking a look at what they have contributed as we look toward the future and the auditor's understanding?

Mr. KING. Yes.

Mr. DAVIS. Larry, let me ask you: Would you describe some of the reasons that Blue Plains has had so many problems with funding and staffing and how you think creating this authority is going to fix it?

Mr. KING. Well, I think the biggest problem that the authority has had has been kind of getting wrapped, and we've seen it in the authority, but water and sewer utility has been wrapped up in the District's budget and budget process. And over the last—I've been in here 4 years, in the District, over a 4-year period, and, throughout that whole time, we've had reductions in force. We've had budget pressures in a lot of places. And they've played themselves out throughout the government, including in water and sewer. In water and sewer, we had reduction of forces, which we lost a lot of good people with a lot of experience, workers. We just had several early easy outs. The last one we were able to control and not lose anybody in water and sewer, but in the early ones we did. And, of course, when you have early easy outs, you do lose your experienced people.

Ms. NORTON. Well, you don't necessarily lose your experienced people.

Mr. KING. We did. We did.

Ms. NORTON. Yes. But, you know, that—you don't—because, see, you know, they can't get it unless you give it to them.

Mr. KING. Right.

Ms. NORTON. This is very bothersome, to hear you all sound as if, you know, Well, we just had to let those people go. Even with the budget mandates on you, that is of great concern to me, that the District has been raped of many of its most experienced workers. I hope we can control that in the future.

Mr. KING. Well, we have, in the very last reduction of—I mean, excuse me, last early easy out, we were able—they had better policies to control that.

Mr. ROGERS. Let me say, Mrs. Norton, I think that, you know, like it or not, those were the facts; that under the—until our budget was finally passed, which contained modified reduction-in-force rules, we had no control. You had a risk; it was agencywide. And we didn't like it, the District suffered, 6,000 people went out. Agencies are decimated, lost institutional memory. Those are the facts. Now, we've gotten smarter, and we've gotten, you know, with the support of you, Ms. Norton, and Mr. Davis, the committee, and, finally, the Congress, in passing our budget in April, we have modified reduction-in-force rules now, that would allow us to more easily target reduction in force. And so but those are the facts; Mr. King is correct.

Mr. KING. And now to go to what—how the authority can help. The authority will have its own personnel system. It will be separate from the District. District government has to go through these that will not be included, and reduction in forces, that kind of thing. Well, the personnel rules that we are contemplating, we're looking at the best in the country right now. We've got examples from all over the country. And so our motto, as we do a transition

into this authority, is to be a cut above in every single thing that we do. And so I think the Authority, by being free of some of the rules and regulations that have hampered it in the past, not getting wrapped up in general fund type of budget crisis, will be able to keep people, hire the correct complement of people. The other side is on the procurement side, which is the other big problem; will have its own procurement system and will not be hampered by some of the problems that we've had in the past, in terms of getting chemicals and other types of supplies.

So those two things, I think, will go a long way to solving some of the glaring problems that people have noted about the operation of Blue Plains and the water and sewer utility as a whole, because it's not just Blue Plains that has those problems; it's the water side and the sewer side also.

Mr. DAVIS. I just need to ask a few more questions, for the record. Michael, the District legislation allows the suburban board members to vote in all issues affecting the general management of the joint-use facilities. What does the term general management mean and why were these words chosen in trying to prepare a detailed list of those issues on which——

Mr. ROGERS. OK. Do you remember that Bruce, Mr. Romer?

Mr. ROMER. [Nodding.]

Mr. ROGERS. Let me say that the first proposal by my colleagues was that the board be involved in direct—issues that were direct and indirect, yes, indirect, yes, that directly or indirectly affected joint use facilities. And the term "indirect" was very objectionable. It was not clear where it would go. General management, that term was selected in a conversation with my colleague, Mr. Romer, and as members of the city management profession, it—you know, issues of personnel. We're going to have one personnel system, you know, for the water side and the wastewater treatment side, one set of procurement rules. There are some policies that are just—should be agencywide. I mean that was the general, you know, the general context.

Mr. DAVIS. OK. Let me yield; Mr. Wynn has a question.

Mr. WYNN. Thank you very much, Mr. Chairman. I'm just wondering could you clarify what subjects would the suburban jurisdictions be excluded from voting on?

Mr. KING. Well, on the water distribution side, those things that exclusively have to do with the District side.

Mr. ROGERS. Yes. The transmission—distribution of water.

Mr. KING. Yes.

Mr. WYNN. Within the district?

Mr. ROGERS. Within the district.

Mr. KING. That's the only place we distribute water is in the District.

Mr. WYNN. OK.

Mr. KING. And, also, we have sewer lines which are not joint use; in other words, do not bring in sewage from Prince Georges or Fairfax. It's not like Potomac Interceptor, which is a joint-use facility. But we have several main and minor sewer lines throughout the District which will not have any vote on, because they're solely District facilities.

Mr. WYNN. Would those procedures have budgetary impact?

Mr. KING. Yes, they would.

Mr. WYNN. How would that resolve, because, obviously, the suburban districts have an interest in anything affecting the budget? You have a right—obviously an interest in those operations that are exclusive in the District of Columbia; how is that going to be resolved?

Mr. ROGERS. Well, let me say that, Mr. Chairman, that—Mr. Wynn and Mr. Chairman and the committee, that the board is going to have to work through, you know, some of those issues. And, as a practical matter, when you—the budget will determine how much money we will need in the coming year. That indirectly will determine how much the Authority will have to raise rates to District of Columbia ratepayers. And that is an issue that is, you know, frankly, sensitive. But I don't think that there is a—you know, while the District board members may decide what the actual—you know, go through the ratemaking process, you know, for the District ratepayers, the total board will adopt the budget. And I think the ratemaking process will come after that. So there is—it's not a clean line in every case is what I'm saying.

Mr. WYNN. I yield back.

Mr. DAVIS. Thank you. Let me just ask some questions for the record. Is the WSA going to have its own personnel system, separate from the District government system and do you consider that a general management issue?

Mr. ROGERS. Yes.

Mr. DAVIS. OK. Is the WSA going to have its own procurement system, separate from the District, and is that a general management issue?

Mr. ROGERS. Yes.

Mr. DAVIS. There's been considerable concern about the District's repayment of fund. And I think the parties have agreed to a figure of $81 million. What guarantees do we have that the money will be paid by the District to WSA?

Mr. ROGERS. Included in the District's multiyear financial plan, that will be submitted to this Congress within days, we have included funds for financing the repayment of this obligation over a 4-year period, at $21,750,000 per year.

Mr. DAVIS. OK. Since the WSA will handle both purely District matters, you know, the water and the sewer pipes, in joint-use facilities, how will the board be able to distinguish which items are only to be dealt with by the District's six board members?

Mr. ROGERS. Well, as I said, as we get to work and really, as a board, and develop bylaws, and really, you know, define these relationships, I think we'll be able to work that out. But the joint use facilities are identified in the legislation.

Mr. KING. Yes.

Mr. ROGERS. And, you know, if it's a matter of what to do with a particular joint-use, you know, facility, then that is an issue on which the full board would vote, and hopefully Mr. King. But if it's a matter of what to do with a distribution of the line in the District, only that would not be a joint-use issue. And I think that, in the bylaws and in board procedures, we would need to, you know, clarify this issue. And I would envision that, in the preparation of the agenda for each authority board meeting, that the general

council, and the general manager, and the chairman of the board would endeavor to identify what issues would require a seven vote majority and what, you know, are joint-use issues, so that, at the time of voting, each member would know what those issues are, and will know what will constitute a majority of the vote of the board on that issue.

Mr. DAVIS. Thanks. I've got a series of other questions, that I will give to you in writing to be answered.

Mr. ROGERS. OK.

Mr. DAVIS. And I think you've seen most of these before. I just wanted to ask two last ones. Do you envision the WSA—how do you envision setting up the bond sales? Is there a separate bond issue for joint-use facilities of purely District items, secured by different revenue streams, or will the board proceed to treat all of its needs the same? Or do you want to have time to answer that?

Mr. ROGERS. In consulting with our financial adviser, I mean it's an issue that's still in review.

Mr. DAVIS. I have a series of questions for you——

Mr. ROGERS. OK.

Mr. DAVIS [continuing]. To give some thought to, before we come back with the legislation, because it's important to the process.

Mr. ROGERS. Sure. Sure.

Mr. DAVIS. Mr. Rogers, let me just say again, to both you and Larry King, we appreciate your counsel being here, how much we appreciate the time and the effort you've put in in the frustrations that we all face. Whenever we sit down in these regional issues where there are honest differences of opinion and perspectives, where a lot of money is on the table now, in the past and in the future, but without you, this would not have moved to where it is today, which is a much better environment I think for the whole region and for an efficient operation than we had before. I thank you both for that. I just wanted to say, for the record, how much we appreciate that, despite some minor differences that we still have yet to resolve.

Mr. ROGERS. Well, Mr. Chairman, thank you for your very kind words, but it's taken a lot of hard work on the part of Mr. King and the staff and corporation counsel and a number of people involved in the District. It's a new day, and we have an attitude of getting things done. I know that, in the past, there may have talked about, you know, doing things at Blue Plains with some new management structure. But what we've tried to do with this process, and I think we've done it, is say what we were going to do and the timeframe in which we do it and go about and do that. I think that that should be recognized, and I believe it is by our colleagues, that we are trying to do the right thing here, but we still have an obligation to protect the interest of our citizens.

Mr. DAVIS. We understand.

Mr. ROGERS. And that's what this is about, on this issue. I mean while I make the comparison to the fact that if we were truly a sovereign jurisdiction, certain things would not be so, even though we are not, and that certain matters have to be resolved here before you, we simply ask that where we have done—attempted to do the right thing and negotiated in good faith, for you to resist the temptation to be that additional lever of pressure to take us in a direc-

tion that we have stated and we believe is not in the best interest of the District.

Mr. DAVIS. I understand. Let me just say, as somebody who headed a suburban jurisdiction, we'll hear from Mrs. Hanley, my successor, in a minute, that we were always second-guessed in Richmond. We had a State government overlooking us every time we would try to do something. And so these local governments all face those kind of reviews with their State governments, many times among boards and committees where they don't have the appropriate power. Mr. Wynn knows that very well from his Senate days and Mrs. Morella from her days in the legislature. So it's a frustration all of us at local government have felt from time to time. But we appreciate what you've done. We need to talk about how far we've moved, and we're going to get this solved very quickly. Thank you very much.

Mr. ROGERS. Well, we're ready to get to work.

Mr. KING. Mr. Davis, maybe you can bring the rest of the members down to Blue Plains. You've had a tour. I think you're probably good enough to give them a tour now of the facility.

Mr. DAVIS. Well, I'm not that good yet, but we'll try to get them down there.

Mr. KING. OK.

Mr. DAVIS. We'll invite the committee members and the other suburban—I think it would be helpful to look at.

Mr. KING. Yes.

Mr. DAVIS. We appreciate what you're doing. Thank you very much.

Our next panel of witnesses are from the Virginia and Maryland counties who are served by Blue Plains and who have already named their board members to the new water and sewer authority. We have Mrs. Kate Hanley, who is the chairman of the Board of Supervisors of Fairfax County. And accompanying Mrs. Hanley is Bill Leidinger, the county executive. We have Mr. Bruce Romer, the chief administrative officer of Montgomery County, who is representing County Executive Doug Duncan. And we have Mr. Howard Stone, the chief administrator officer of Prince Georges County, who is representing County Executive Wayne Curry. We welcome you. Let me just say it's the policy of this committee, as an oversight committee in Congress, to swear everybody in.

[Witnesses sworn.]

Mr. DAVIS. Thank you all very much. It took a little longer to get to you than we had envisioned. Kate will start. Oh, wait a minute. OK. We're going to try to keep the committee hearing going, so I'm going to have Mrs. Morella go vote and come back to relieve me. We'll give you about 10 minutes and then I'll run over.

So Kate, why don't you start. Thank you for being here. We appreciate it.

STATEMENTS OF KATE HANLEY, CHAIRMAN OF THE BOARD OF SUPERVISORS, FAIRFAX COUNTY, ACCOMPANIED BY WILLIAM LEIDINGER, FAIRFAX COUNTY EXECUTIVE; BRUCE ROMER, CHIEF ADMINISTRATIVE OFFICER, MONTGOMERY COUNTY; AND HOWARD STONE, CHIEF ADMINISTRATIVE OFFICER, PRINCE GEORGES COUNTY

Ms. HANLEY. Well, thank you, Mr. Chairman. I'm delighted to be here. I am Kate Hanley, chairman of the Fairfax County Board of Supervisors. And also with me today is William Leidinger, county executive in Fairfax, and also the chairman of the Regional Blue Plains Committee, established under the IMA. I am very pleased to be here to provide testimony on this important issue. As you may know, Fairfax County contributes flow to the Blue Plains Plant. The efficient, effective operation of Blue Plains is critical to the economic and environmental well being of Fairfax County as well as the region.

The Fairfax County Board of Supervisors, on May 20, 1996, agreed to participate in the District of Columbia Water and Sewer Authority by appointing Mr. Leidinger as our representative on the board of directors of the authority and John diZerega, the director of public works in Fairfax County as the alternate member.

The county is pleased that the District of Columbia has submitted emergency legislation to revise the bill establishing the authority to provide six members from the District of Columbia, two members from Montgomery County, two members from Prince Georges County, and one from Fairfax County, as previously requested by the suburban jurisdictions. This emergency legislation also provides that eight affirmative votes of the authority board will be required to hire and fire the authority general manager.

However, as pointed out in a letter of March 19, 1996 to you, Congressman Davis, there are several other changes to the authority structure which suburban jurisdictions believe must be addressed, and these are: I will cover them briefly. They are attached as well as the attachment to the letter. There are lots of attachments. The legislation should require an affirmative vote of eight board members on all matters related to joint use regional facilities, with a minimum of two affirmative votes in the majority from suburban jurisdictions, one each from separate jurisdictions. I think we're familiar with that model in the WMATA compact. The legislation should require all assets related to joint-use facilities be transferred to the authority by the District without compensation, since the suburban jurisdictions have already paid their proportionate costs for these assets over the years. The legislation should require the notification and review of suburban chief elected officials on the sale or lease of any or all of the Blue Plains facilities or other joint use facilities.

Fairfax County believes the resolution of these issues is important to the proper operation of the authority.

Over the longer term, Fairfax would like to see the development of a true regional authority for the operation of the Blue Plains Plant and the joint use facilities. A study of this issue is required by the District's legislation, which established the authority, and I trust this study will be undertaken soon. Fairfax County believes that a regional authority should be established to operate just Blue

Plains and the other joint facilities, and need not be concerned with the day-to-day operation of the city's water system nor the sewer collection system.

Thank you, Mr. Chairman, for the opportunity to be here today to voice the county's position. I would be happy to answer any questions, and I'm sure Mr. Leidinger will be happy to chime in here as well. And, again, there are attachments that lay out all of those positions, particularly the letter signed by the regional bodies from March 19.

[The prepared statement of Ms. Hanley follows:]

Mr. Chairman and Honorable Members of the House of Representatives

My name is Katherine Hanley and I am the Chairman of the Fairfax County Board of Supervisors. I also have with me William Leidinger, County Executive of Fairfax County. I am very pleased to be here today to provide testimony on this important issue since, as you may know, Fairfax County contributes flow to the Blue Plains Plant. The efficient, effective operation of Blue Plains is critical to the economic and environmental well being of Fairfax County as well as the Region.

The Fairfax County Board of Supervisors on May 20, 1996 agreed to participate in the District of Columbia Water and Sewer Authority by appointing William Leidinger, as our representative on the Board of Directors of the Authority and John di Zerega, Director of Public Works, Fairfax County as the alternate member.

The County is pleased that the District of Columbia has submitted emergency legislation to revise the Bill establishing the Authority to provide 6 Board Members from the District of Columbia, 2 members from Montgomery County, Maryland , 2 members from Prince George County, Maryland and 1 from Fairfax County, Virginia as previously requested by the suburban jurisdictions. This emergency legislation also provides that 8 affirmative votes of the Authority Board will be required to hire and fire the Authority General Manager.

However, as pointed out in a letter of March 19, 1996 to Congressmen Davis, there are several other changes to the Authority structure which the suburban jurisdictions believe must be addressed, these are:

- The legislation should require an affirmative vote of eight (8) Board members on all matters related to joint use regional facilities with a minimum of two (2) affirmative votes in the majority from suburban jurisdictions (one each from separate jurisdictions).

- The legislation should require all assets related to joint use facilities be transferred to the Authority by the District without compensation since the suburban jurisdictions have already paid their proportionate costs for these assets over the years.

- The legislation should require the notification and review of suburban chief elected officials on the sale or lease of

of suburban chief elected officials on the sale or lease of any or all of the Blue Plains facilities or other joint use facilities.

Fairfax County believes the resolution of these issues is important to the proper operation of the Authority.

Over the longer term, Fairfax would like to see the development of a true Regional Authority for the operation of the Blue Plains Plant and the joint use facilities. A study of this issue is required by the District's legislation which established the Authority and I trust this study will be undertaken soon. Fairfax County believes that a Regional Authority should be established to operate just Blue Plains and the other joint use facilities; and need not be concerned

with the day to day operation of the City's water system nor the sewer collection system.

I thank you for the opportunity to be here today to voice the County's position. I would be happy to answer any questions.

March 19, 1996

The Honorable Thomas M. Davis, III
United States House of Representatives
Washington, DC 20515

Subject: District of Columbia Bill #11-102 - Local Water and Sewer Authority

Dear Representative Davis:

This letter represents a regional consensus of the County Executives and County Councils of Montgomery and Prince George's Counties and the Fairfax Board of Supervisors.

Recently the District of Columbia Council adopted Bill #11-102 to establish a Local Water and Sewer Authority. On January 31, 1996, the Mayor signed this bill into effect subject to review by the Financial Authority and approval by Congress. While the establishment of the Local Water and Sewer Authority has generated much discussion among the suburban jurisdictions who use and have invested in Blue Plains, the Authority represents a major step forward by the District of Columbia to solve immediate issues of concern regarding the management and operations of the Blue Plains facility.

It must also be recognized that the District and the suburban jurisdictions have worked hard to embrace the concept of regional problem solving in the law establishing the Authority. The District of Columbia is to be commended for its efforts in recognizing the need to share authority and responsibility for matters related to the Blue Plains facility.

There has been much public discussion about the establishment of a regional sewer authority through the adoption of an interstate compact, similar to what was established for the Washington Metropolitan Transit Authority. Indeed, many of the suburban partners believe that this may be a more desirable permanent solution to our needs. However, it is recognized that the development and enactment of such an interstate compact can be a long and complex process. It can be achieved only through the support, both political and financial, of all the jurisdictions involved. Therefore we strongly recommend that a study to identify the feasibility of a true Regional Authority be initiated within 120 days of the effective date of the Act creating the new D.C. Water and Sewer Authority, and that the study be completed within 12 months after the selection of a consultant. Furthermore, we recommend that the Blue Plains suburban jurisdictions participate as equal partners with the District of Columbia in the development of the scope of work, selection of the consultant, and approval of the interim and final product.

In the meantime, we need to focus upon the immediate approach to managing this important regional public facility. The Water and Sewer Authority can be viewed as an

appropriate interim management structure to provide a platform from which a more formal interstate compact can be pursued.

There continue, however, to be significant concerns among the suburban jurisdictions and their legislative bodies about the District's legislation establishing the Authority. The suburban jurisdictions have reached consensus on these key issues which, if addressed by legislative changes to Bill #11-102, would result in our active support for, and participation in, the Water and Sewer Authority. These changes include: (1) increasing the representation of suburban participants from 4 to 5 for a total of 11 members on the Board of Directors and requiring an affirmative vote of a certain number of suburban representatives for specified matters coming before the Authority's Board; (2) transferring certain assets previously funded by the suburban jurisdictions without charge to the jurisdictions; and, (3) requiring notice and review by the suburban jurisdictions on the sale or lease of joint use facilities. These three changes to the current law are described in more detail in the attachment to this letter.

Your assistance in achieving these changes in the Congressional review and approval of the District of Columbia Bill #11-102 would be appreciated. Without these changes, it is not clear that the new Authority will be able to do what all of us know needs to be done in order to resolve the significant and immediate problems facing Blue Plains, or that the future integrity of this critical regional facility and service delivery system can be assured. If we can be of assistance to you in your efforts, please call upon us.

Sincerely,

Wayne K. Curry, County Executive
Prince George's County

Douglas M. Duncan, County Executive
Montgomery County

Stephen J. DelGiudice, Chair
Prince George's County Council

Gail H. Ewing, President
Montgomery County Council

Katherine K. Hanley, Chair
Fairfax County Board of Supervisors

cc: Mayor Marion Barry, District of Columbia
Michael Rogers, Chief Adminstrator
Cortez White, General Manager, WSSC
Ruth Crone, Executive Director, MWCOG
Delegate Eleanor Holmes Norton

Distribution of original letter to:

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Virginia:

Senator John W. Warner
Senator Charles S. Robb
Representative James P. Moran
Representative Frank R. Wolf
Representative Thomas M. Davis, III

MARCH 19, 1996

REGIONAL CONSENSUS OF SUBURBAN INTERESTS IN BLUE PLAINS

SUBMITTED BY: Montgomery and Prince George's County, MD and Fairfax County, VA.

RE: DISTRICT OF COLUMBIA - BILL #11-102, WATER AND SEWER AUTHORITY ESTABLISHMENT AND DEPARTMENT OF PUBLIC WORKS REORGANIZATION ACT

ENROLLED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA ON JANUARY 16, 1996

SIGNED BY THE MAYOR OF THE DISTRICT OF COLUMBIA ON JANUARY 31, 1996

RECOMMENDED CHANGES NEEDED TO BILL #11-102:

1. Governance

Issue

To provide appropriate proportional representation to the suburban users of the joint use sewer facilities and to assure the participation of such representatives on matters affecting Board matters and joint use facilities.

A. Background:

(1) The Bill provides for the establishment of a Board of Directors (Section 204) to be comprised of 10 members. Six board members are to be residents of the District appointed by the Mayor with the advise and consent of Council. Four persons are to be recommended by the other participating suburban jurisdictions: One from Fairfax County; one from Montgomery County; one from Prince George's County and one from the Washington Suburban Sanitary Commission.

(2) Alternate Board members are appointed in the same manner.

(3) Section 204 (j) specifies that six board members shall constitute a quorum for the transaction of business, and an affirmative vote of a majority of the members present, who are permitted to participate in the matter under consideration, shall be required to approve any Board action; except, that 7 affirmative votes are required for approval of the Authority's budget and selection of the General Manager.

(4) Section 204 (a)(3) states that the Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining 4 Board positions. The 4 Board members shall only participate in decisions affecting the general management of joint-use facilities.

B. Discussion

(1) Suburban Representation on the Board of Directors

Some of the suburban jurisdictions feel that the proportional representation provided in Section 204 and the 7 vote majority on the budget and appointment of the general manager are not sufficient and do not reflect the proportional users of Blue Plains. Many of the suburban jurisdictions feel that 6 representatives from the District and 4 from the suburban jurisdictions is not properly representative of the interests, investments and use of the joint use facilities. There is consensus among the suburban jurisdictions that the number of suburban representatives should be increased to 5 representatives - 2 from Prince George's County; 2 from Montgomery County and 1 from Fairfax County.

(2) Requiring an 8 vote majority on matters affecting joint use facilities

There is concern that a balance of District and suburban votes should be required on Board actions affecting joint use facilities rather than just a simple majority of members present. There is consensus among the suburban jurisdictions that the legislation provide for 8 affirmative votes on designated matters of interest and that there be a minimum of 2 affirmative votes in the majority from suburban jurisdictions, i.e. one each from separate jurisdictions.

(3) Scope of Participation by Suburban Representatives on the Board

The suburban jurisdictions feel that "general management" of joint use facilities needs further definition in the legislation. There is consensus that suburban participation be included on Board actions involving capital and operating budgets of the Authority, joint use facilities, procurement, personnel, financing, selection and termination of the General Manager and any other matters substantially affecting the general management of joint use facilities.

C. *Proposed Changes to Bill #11-102*

(1) **Increase suburban representatives from 4 to 5**

Amend Section 204 (a)(1) to read as follows: (amendment in italics) and [delete]

The Authority shall be governed by a board of directors ("Board") comprised of [10] *11* members.

Amend Section 204 (a)(3) to read as follows: (amendment in italics) and [delete]

The Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining [4] *5* Board positions. The [4] *5* Board members shall [only] participate in decisions affecting the general management of the joint use facilities. Of the [4] *5* non-District Board members appointed by the Mayor:

A. One Board member shall be recommended by Fairfax County, Virginia, pursuant to *its local* jurisdictional law;

B. *Two* Board members shall be recommended by Montgomery County, Maryland, pursuant to *its local* jurisdictional law;

C. *Two* Board members shall be recommended by Prince George's County, Maryland, pursuant to *its local* jurisdictional law.

(2) **Require 8 affirmative votes on designated matters of suburban interests**

Amend Section 204(j) to require 8 affirmative votes in the majority from the suburban representatives on certain matters before the Board and that there be a minimum of 2 affirmative votes in the majority from representatives from at least two separate suburban jurisdictions.

Section 204(j) to be amended as follows: (amendment in italics)

"Before any meeting of the Board, Board members shall be notified of the meeting. Six Board members shall constitute a quorum for the transaction of business. The existence of a quorum and an affirmative vote of a majority of the members present shall be required to approve any Board action, ***provided however, that 8 affirmative votes shall be required for any Board action which affects capital and operating budgets, joint use facilities, procurement, personnel, financing, selection and termination of the General Manager, by-laws of the Board and any other matters substantially affecting the general management of joint use facilities and that of the 8 affirmative votes, 2 shall be from representatives representing at least 2 separate suburban jurisdictions.*** No vacancy in membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board."

2. Asset Transfer to the Authority

Issue

To assure that Authority does not charge the suburban jurisdictions for facilities or improvements that were previously funded or paid for by the jurisdictions.

A. Background

Section 207 establishes a separate Water and Sewer Enterprise Fund to be operated by the Authority and monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District. The Mayor grants to the Authority, through an inter-District transfer, the right to use any assets needed for the Authority operations under terms and conditions deemed appropriate. Also to be transferred are any liabilities that are directly attributable to the water and sewer system. The District retains title to all assets made available to the Authority's use. The District is also retaining any general obligation debt associated with the water and sewer system; however, the Authority is required to make payments to the General Fund of the District until such bonds are retired.

B. Discussion

All of the suburban interests feel that the legislation does not recognize the substantial investments made in facilities at Blue Plains. Although the IMA would not permit the District to charge the suburban interests for such facilities, there is concern that the Authority may at some future date be required to pay for such facilities.

C. *Proposed Changes to Bill #11-102*

Amend Section 207 (e) to assign Blue Plains assets to the Authority without compensation.

Section 207 (e) to be amended as follows: (amendment in italics)

> ***Assets that were purchased or constructed with federal funds, customer or developer contributions, and funds paid by the Blue Plains user jurisdictions or Water and Sewer Enterprise Funds, including land and land rights and other tangible and intangible assets acquired with these funds, shall be assigned to the Authority without any further compensation from the Authority.***

3. Approval by the Mayor and Council - sale or lease all or parts of Blue Plains

Issue

To require notification and review of suburban chief elected officials on the sale or lease of any or all of the Blue Plains facility.

A. Background

The legislation requires under Section 205(g)(3) that before the Authority may enter into any sale or lease contract for all or any portion of the Blue Plains Wastewater Treatment Plant, the contract must be approved by the Mayor and the Council subject to the Self-Government Act and Contract Approval Act and any succeeding laws.

B. Discussion

All of the suburban jurisdictions feel that any sale or lease of any Blue Plains facility financed in whole or in part by federal grants, user or developer fees or by the suburban users should also be subject to notice of and review by the chief elected official of the participating suburban jurisdiction.

C. *Proposed Changes to Bill #11-102*

Amend Section 205(g)(3) to have any sale or lease of the Blue Plains facility also be subject to notification of and review by the participating suburban jurisdiction.

Amend Section 205(g) as follows: (amendment in italics)

> No contract to purchase or lease all or any portion of the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority unless the Board submits the sale or lease contract to the Mayor, the Mayor approves and submits the contract to the Council and the Council approves the contract pursuant to ...the Self-Government Act...and the Contract Approval Act and any succeeding laws; ***and unless prior***

notification of and review by has been provided to the Board of Supervisors, Fairfax County, Virginia, the chief elected official of Montgomery County, Maryland, and the chief elected official of Prince George's County, Maryland.

Mr. DAVIS. Ms. Hanley, thank you very much. We'll move to you, Mr. Romer. Mrs. Morella wanted to be here but we're having a vote and, instead of recessing for 20 minutes and holding up everyone, if it's all right with you, we'll move ahead with the testimony and then we'll move to questions. It's not a lack of interest on her part. I sent her over as an advance party, and when she comes back, she will preside.

Mr. ROMER. I understand. Thank you.

Good morning, Chairman Davis and members of the subcommittee. I am Bruce Romer, chief administrative officer for Montgomery County. I am joined here today by Howard Stone, the chief administrative officer for Prince Georges County.

Our testimony is submitted jointly, by Montgomery and Prince Georges Counties, on behalf of our county executives, Douglas Duncan and Wayne Curry, regarding the District's legislation establishing a District of Columbia Water and Sewer Authority and congressional legislation to provide the authority with bonding capability required to fulfill its mission.

The District of Columbia Water and Sewer Authority will have significant impact on the regional Blue Plains treatment facility. Currently, Blue Plains handles about 94 percent of the wastewater flows from Montgomery County and about 54 percent of the flows from Prince Georges County. Under the 1985 Intermunicipal Agreement, the District of Columbia, the counties of Fairfax, Prince Georges, and Montgomery, and the Washington Suburban Sanitary Commission, have worked cooperatively to develop and allocate appropriate wastewater facility capacity to meet our respective needs in a mutually beneficial and cost effective manner. In fact, the suburban users represent over 50 percent of the allocated capacity for Blue Plains. Under the IMA, operating and maintenance costs are allocated to the users based on current metered flows, including annual payments of over $1 million we consider as rent for Blue Plains land utilized by allocated facility capacity. Capital costs have been based upon capacity allocations. Prince Georges and Montgomery Counties pay through WSSC about $40 million annually for operating and maintenance costs. Our capital investment in Blue Plains to date is about $346 million.

The establishment of the DC Water and Sewer Authority represents——

Mr. DAVIS. Can you give me those numbers again. I know we have them down, but I'm taking notes.

Mr. ROMER. We pay about $1 million that we consider as rent for Blue Plains land that's utilized by allocated facility capacity. Prince Georges and Montgomery Counties pay through WSSC, through the Washington Suburban Sanitary Commission, $40 million annually for operating and maintenance. And our capital investment, to date, is $346 million.

The establishment of the DC Water and Sewer Authority represents a major step forward by the District of Columbia to share authority and responsibility for matters related to the Blue Plains facility, while solving the immediate issues of financial management, procurement, and personnel systems which plague the current operation. The District, in our view, has cooperatively addressed many of the major concerns raised by the suburban users

in the District of Columbia bill, as recently amended. These issues involve governance of the authority through its board of directors and review by the suburban users of any proposed sale or transfer of Blue Plains assets.

There has also been much discussion and continuing interest in the establishment of a regional authority. We have been quick to acknowledge that a true interstate authority, similar to the Washington Metropolitan Area Transit Authority, may well be a more desirable permanent solution for all of our needs. However, the development and enactment of such an interstate compact is a complex process, will likely take years to accomplish, and will only be achievable with the support, both political and financial, of all the jurisdictions to which it would apply. To fully explore the ramifications of an independent regional authority, the District and the suburban users have agreed to expedite the feasibility study of a regional authority and to initiate that study promptly.

While we examine the long-range potential of a regional authority, we must address the immediate needs and requirements for managing the Blue Plains facility, which is owned and operated by the District. The DC Water and Sewer Authority is a step in the right direction. This authority and our collective participation provides an appropriate interim management structure as well as a platform from which we can explore the more formal interstate agreement.

Title V, Fiscal Impacts, of the District bill establishing the Authority, identifies many of the issues to be addressed in separating the finances of the authority from the District. When the new DC Water and Sewer Authority is established, it must be independent and financially solvent, with sufficient working capital to properly and effectively operate and maintain its systems. It is also essential that the Authority have access to the bond market to finance its capital improvement project needs. Timely congressional action to provide the appropriate bonding authority is needed and we support your efforts to convey to the new authority the borrowing capacity it needs to fulfill its purpose.

In summary, the District has been forthcoming and has demonstrated cooperation in seeking regional solutions acceptable to all parties. We look forward to our active participation on the board of directors of the water and sewer authority. We also appreciate the timely consideration and congressional action to enable the newly established authority to financially manage and operate this very important regional asset, the Blue Plains Wastewater Plant.

[The prepared statement of Mr. Romer follows:]

District of Columbia Subcommittee
Legislative Hearing
Wednesday, June 12, 1996
9:00 AM, 2247 Rayburn House Office Building

Testimony before the District of Columbia Subcommittee of the Government Reform and Oversight Committee Regarding Blue Plains Wastewater Treatment Plant

Montgomery and Prince George's County, Maryland

Good morning, Chairman Davis and members of the Committee, I am Bruce Romer, Chief Administrative Officer for Montgomery County. I am joined today by Howard Stone, Chief Administrative Officer for Prince George's County.

This testimony is submitted jointly by Montgomery and Prince George's Counties on behalf of County Executives Douglas Duncan and Wayne Curry regarding the District's legislation establishing a District of Columbia Water and Sewer Authority and Congressional legislation to provide the Authority with bonding capability required to fulfill its mission.

The District of Columbia Water and Sewer Authority will have significant impact on the regional Blue Plains Treatment Facility. Currently, Blue Plains handles about 94% of the wastewater flows from Montgomery County and about 54% of the flows from Prince George's County. Under a 1985 Intermunicipal Agreement (IMA), the District of Columbia, the counties of Fairfax, Prince George's and Montgomery and the Washington Suburban Sanitary Commission (WSSC) have worked cooperatively to develop and allocate appropriate wastewater facility capacity to meet our respective needs in a mutually beneficial and cost effective manner. In fact, the suburban users represent over 50% of the allocated capacity for Blue Plains. Under the IMA, operating and maintenance costs are allocated to the users based upon current metered flows, including annual payments of over $1 million we consider as rent for Blue Plains land utilized by allocated facility capacity. Capital costs have been based upon capacity allocations. Prince George's and Montgomery Counties pay through WSSC about $40 million annually for operating and maintenance costs. Our capital investment in Blue Plains to date is about $346 million.

The establishment of the Water and Sewer Authority represents a major step forward by the District of Columbia to share authority and responsibility for matters related to the Blue Plains facility, while solving the immediate issues of financial management, procurement and personnel systems which plague the current operation.

The District has cooperatively addressed many of the major concerns raised by the suburban users in the District of Columbia Bill 11-102, as recently amended. These issues involved governance of the Authority through its Board of Directors and review by the suburban users of any proposed sale or transfer of Blue Plains assets.

There has also been much discussion and continuing interest in the establishment of a regional authority. We have been quick to acknowledge that a true interstate authority, similar to the Washington Metropolitan Area Transit Authority, may well be a more desirable permanent solution for all of our needs. However, the development and enactment of such an interstate compact is a complex process, will likely take years to accomplish, and will only be achievable with the support, both political and financial, of all the political jurisdictions to which it would apply. To fully explore the ramifications of an independent regional authority, the District and the suburban users have agreed to expedite the feasibility study of a regional authority and to initiate the study promptly.

While we examine the long range potential of a regional authority, we must address the immediate needs and requirements for managing the Blue Plains regional facility, which is owned and operated by the District of Columbia. The Water and Sewer Authority is a step in the right direction. This Authority and our collective participation provides an appropriate interim management structure as well as a platform from which we can explore a more formal interstate agreement.

Title V, Fiscal Impacts, of the District Bill establishing the Authority, identifies many of the issues to be addressed in separating the finances of the Authority from the District. When the new Water and Sewer Authority is established, it must be independent and financially solvent, with sufficient working capital to properly and effectively operate and maintain its systems. It is also essential that the Authority have access to the bond market to finance its capital improvement project needs. Timely Congressional action to provide the appropriate bonding authority is needed and we support your efforts to convey to the new Authority the borrowing capacity it needs to fulfill its purpose.

The District government has been forthcoming and has demonstrated cooperation in seeking regional solutions, acceptable to all parties. We look forward to our active participation on the Board of Directors of the Water and Sewer Authority. We also appreciate the timely consideration and Congressional action to enable the newly established Authority to financially manage and operate this important regional asset, the Blue Plains Wastewater Treatment Facility.

JUL 10 1996

OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan
County Executive

June 18, 1996

Bruce Romer
Chief Administrative Officer

The Honorable Thomas M. Davis, III
Chairman, District of Columbia Subcommittee
House of Representatives
415 Cannon House Office Building
Washington, DC 21515-0010

Dear Representative Davis:

We are pleased to respond to the questions you posed during the June 12, 1996 legislative hearing on the Blue Plains Wastewater Treatment Plant.

The following comments are in response to your questions and to supplement the testimony given before the subcommittee.

In response to question number 4 regarding the June 5 amendments, we feel that these amendments were both substantive and positive. These amendments came as an outgrowth of ongoing discussions among the Chief Administrative Officers of the suburban jurisdictions and District of Columbia City Administrator, Michael Rogers. These amendments implement the agreements made during those discussions and produce an improved governance structure for the new Water and Sewer Authority.

With respect to question number 5, it is our view that the recent amendments represent a continuing commitment to regional cooperation on the part of the District of Columbia. The amendments are responsive to many of the suburban concerns articulated in our May 19, 1996 letter. Although not affirmatively addressing every issue, the amendments reflect the understandings reached between Mr. Rogers and the suburban representatives. While our County Council and Executive continue to note that a true interstate authority may well be the preferred governance structure, achieving this could take many years; therefore, the District Authority as amended provides a workable framework from which additional study of a regional authority can be undertaken.

There have been substantial discussions in the Chief Administrative Officers' group for Blue Plains regarding the feasibility study for an interstate compact. We have been assured by Mr. Rogers that opportunity will be provided to review the scope and schedule and to set the parameters for the study. The review of this material is imminent and we anticipate the prompt start-up of the study upon completion of the review process.

It is our understanding that the debt to be assumed by the Authority is the outstanding general obligation notes issued by the District for financing of facilities directly utilized by WASUA. It is reasonable that this debt be assumed by the Authority.

The performance of a comprehensive, independent audit of the District's water and sewer facilities' assets and liabilities was fundamental to the agreement among the District, suburban representatives, and Chairman Davis that would resolve the matter of the transfer of assets. The audit would determine the facilities, activities, and personnel to be transferred to the Authority. As members of the Board of Directors of the Authority, we will look with great interest into the findings of the audit.

Concerning question number 9, the District legislation maintains the IMA as a controlling document, including its rate setting mechanism for "wholesale" rates for IMA suburban users.

I hope this information is helpful. Please let me know if we may provide any further assistance or information.

Sincerely,

Bruce Romer
Chief Administrative Officer

BR:cs

Mr. DAVIS. Thank you very much. Mr. Stone, before I recognize you, just note again, Mr. Wynn is on his way back, and he wants to hear you, and he'll be here for some questions, and Mr. Hoyer stuck his head in, is also voting, and, as soon as they come back, they'll be here for any question and answer period. But thank you for being with us.

Mr. STONE. Thank you, Mr. Chairman. The only thing I would like to add is that we have submitted this testimony jointly, in the interest of time, and we concur wholeheartedly with the testimony as read by Mr. Romer.

Mr. DAVIS. Well, we thank you for that.

I'm going to recess right now for just a couple minutes until Mrs. Morella comes back. I'll let her start the questioning, and she'll just be a couple minutes, and so I can go over to vote, and I'll be back in about 10 minutes.

[Recess.]

Mrs. MORELLA [presiding]. Ladies and gentlemen, I'm going to reconvene the subcommittee in the interest of time. And I understand that, while I went off and made that—cast that important vote on the Journal, that you had all testified. And so I'll start off with a few questions. I do want to welcome you. Boy, this does show regional cooperation, when we've got the whole suburban area together, having just heard from the District of Columbia.

I guess I'll start off with Ms. Hanley.

Ms. HANLEY. Certainly.

Mrs. MORELLA. Do you believe that the WSA legislation is better, in fact substantially better, because of the amendments that were added on June 5?

Ms. HANLEY. Well, as I pointed out in my testimony, certainly I think that it's moving in the right direction.

Mrs. MORELLA. Moving in the right direction. Again, from the testimony I've read, we all feel we still have a way to go, but we are moving in the right direction?

Ms. HANLEY. Yes.

Mrs. MORELLA. Those amendments do help. Do you feel that the concerns that Fairfax County has raised throughout the process and has raised once again this morning have been heard and dealt with in a reasonable manner, considering the situation as it exists today; and, by that, I mean if there is an urgent need to do something right away, even if it's not a preferred long-term solution?

Ms. HANLEY. Well, I think our appointment to a member of the Authority and the moving along, the interest in participating, recognizes that there is a need to do some—to take some action. And, again, we're moving in the right direction.

Mrs. MORELLA. Chairman Davis had mentioned at the meeting that he had with the three counties that he thought that you all had agreed that the asset transfer question could not be addressed in its immediate context and that it would be addressed in a study; do you agree with that position?

Ms. HANLEY. Yes.

Mrs. MORELLA. I see Mr. Romer and Mr. Stone. Welcome.

Mr. STONE. Thank you.

Mr. ROMER. Thank you.

Mrs. MORELLA. Would you care to comment on the June 5 amendments and let us know whether your counties view those changes as substantive and positive?

Mr. STONE. As I've stated earlier, we definitely agree—view the changes to the exceptions as very positive and have gone a long way in getting this Authority at this point.

Mr. ROMER. I would like to underscore that as well, and the answer is yes for Montgomery County. And we should probably also acknowledge that we didn't put on our testimony, but we have already communicated that we will be represented with the names of our representatives.

Mrs. MORELLA. I know you have. I know. And I applaud you for that, for being ready.

Mr. ROMER. So we are ready——

Mrs. MORELLA. And one of the other nominees is sitting in the front row there too. I welcome him also. In the past, Mr. Romer and Mr. Stone, you have each expressed some more concerns as those that were raised by Ms. Hanley. Do you believe that the agreements that you reach with Mr. Rogers address those concerns?

Mr. ROMER. I certainly do. I think that while there are some areas that we can point to that we have not achieved everything that was put in the earlier communication, it is still very much the case that substantial progress has been made and—workable board is embodied in the legislation.

Mrs. MORELLA. And do you think, and I would address this to all of you, in terms of your feeling, that whether you feel that your input into the study to be conducted, as far as the RFP and the work parameters and the draft review, were satisfactory?

Mr. LEIDINGER. We have been advised that we will fully participate in that process and are satisfied with this.

Mrs. MORELLA. So the idea of the fair representation and participation, if you could wave a magic wand, what would you most want in such legislation? Anyone can start that one.

Mr. LEIDINGER. If I may, referring back to the March 19 letter that was sent to Mr. Davis, with a copy to Delegate Norton and—or Representative Norton and Representative Morella, that letter was signed not only by the chairman of the board of Fairfax County on behalf of herself, but also on behalf of the entire board. And the letter was also signed by the two county executives in Montgomery and Prince George's Counties, and the chair of the Prince George's County Council, and the president of the Montgomery County Council.

My point in mentioning that is that it represents a very strong regional consensus in terms of things that are important, in the views of those elected officials, regarding Blue Plains that were not and are not yet totally resolved. That letter points out that without these changes, it is not clear the new authority will be able to do what all of us know needs to be done in order to resolve the significant and immediate problems facing Blue Plains. But the future integrity of this critical regional facility and service delivery system can be assured. And that's what I think the region is looking for, a comfort, insurance, that the right thing will be done in the right way and that there will be full meaningful players and that their

votes will be effective. The eight votes are not intended to do something to the District. The District is going to have six votes. No one can do something to the District that the District doesn't agree to. But it was felt by the jurisdictions that eight votes, with two of those coming from two different suburban jurisdictions would not only better flavor the authority as more of a regional authority, and everyone has agreed, thus far, that we ought to move to a true regional authority as quickly as possible. But the eight-vote requirement, with two of those votes coming from two different suburban jurisdictions would give the flavor of truly a more regional authority, and I think it would give additional comfort to the suburban jurisdictions that something is not going to be done to them, just as they wouldn't want to do anything to the District. It would allow this authority to work pretty much in the fashion that Metro—the Regional Transit Authority operates in requiring that extra majority vote from a number of jurisdictions.

Mrs. MORELLA. I might ask Mr. Romer and Mr. Stone, does it give you comfort? I mean are those eight votes OK? I mean what is your response?

Mr. ROMER. Well, certainly, the movement by the District to embody the principle of eight votes with respect to the general manager appointment, we view it as clearly a step in the right direction and was positive. We never assumed that every one of the things in that letter would be embodied in legislation. In fact, we just acknowledged, in the earlier conversation, about the asset transfer issue, that we have already mutually acknowledged that that will not be dealt with in the legislation and it will be dealt with later on in studies. So there are a number of examples, both already done, as you might say, that suggest that we're solving the concerns by other means. There's some yet to be resolved, but clearly we view that even the entry into the issue of the eighth vote is one of the subjects that's positive.

Mr. STONE. I would concur. Even in the formal meetings we had with Mr. Rogers, and I frankly say that he had some reservations, but would see what he could do in terms of the eight vote issue. And I think that he has well addressed that issue. We still have some concerns, as Mr. Romer said, about the asset transfer, but we believe that we're moving in the right direction.

Mrs. MORELLA. Ms. Hanley, did you want to comment?

Ms. HANLEY. No.

Mrs. MORELLA. I'm going to defer to the chairman now.

Mr. DAVIS [presiding]. OK. Ms. Norton, your turn.

Ms. NORTON. I appreciate the testimony that all of you have given. And I want to say, for the record, how much I appreciate the collegial way in which you have worked out a very difficult matter. I certainly acknowledge the genuine grievances that you had, and I think the District has done so too. And I hope we can continue in that spirit. I have to tell you I taught negotiations, one of the subjects I taught when I was a full-time professor at Georgetown. And, of course, one of the, especially as negotiation is done today, one of the functions of win/win is an acknowledgement that there can be no absolute surrender; every side has to give. And that has really marked the way in which you have proceeded on this negotiation.

The chairman and I just had a situation yesterday where there was a markup on the aqueduct bill. We got a bill through; it was entirely satisfactory to me. In the District's financial condition, I wanted the corps to maintain jurisdiction indefinitely. And I wanted certain matters with respect to borrowing. The chairman had some concerns. He and I both talked to our respective chairman. I could have gone to the White House, however, because the bill still has to go there, and gotten the President in the mix. But I decided that the way to handle the matter was to negotiate as well as I could here, because I wanted to maintain—I wanted to get somewhere, but I wanted to maintain the relationship, the collegial relationship I have developed with my chairman and that he has developed with me. So I did not get every point in the legislation that I desired, and I did have recourse that I decided not to take. One gets nothing done in this body if one does not understand that, because it is just that delicately balanced, as polarized as this Congress is. And this committee is not among those that are polarized, I might add, but as polarized as it is, the past year ought to make it perfectly plain that unless there is give and take, nothing does get done; governments get shut down, stuff like that happens.

The District has come an extraordinary distance. I mean I remember, in the last administration, where the District wanted the region to pay users fees. And now we're to the point where the District has gone, in some ways to de facto, a regional entity and been willing to give up a lot of the sovereignty that it had over this facility. So when you pack around the edges of an agreement that is taken a year and a half to get to and pick a fight, then you have to be careful, because you're going to have to live with the District on this matter. The fights that occur are very unhelpful in this climate. We had a fight in the District that has been very unhelpful in the last week; the liability to move things forward for the District. And the only way to get something done in this body is to actually look at a point and say, Is this really worth turning the tables over on? And do not think that if the tables are turned over on that side that we simply fall over and die. We have to fight for everything we have up here. We don't want any fights. We want it to continue the way it has.

And I'm concerned about this eighth point, I really am, because I can't believe that it is the kind of matter that one would want to toss up to the Congress. We already have seven provided. The District only has 6 of 11 votes, therefore, you have to have a suburban vote, in any case. I don't understand why this matters. And I would like to hear why going from seven to eight is important. I'd like to hear the underlying power—to bring up here a matter which the parties have not settled among themselves. I think Ms. Hanley should answer it.

Ms. HANLEY. Well, I guess 6 of 11 is a majority of 11. But I think there was the view that the suburbs don't consider themselves as a monolith; that one vote representing the suburban jurisdictions is not all the suburban jurisdictions, recognizing that we don't always agree, and conversely recognizing that they shouldn't all—you shouldn't have to have concurrence from all suburban jurisdictions because they are not a monolith. So it works both ways. I think——

Ms. NORTON. Excuse me. But, you know, on the theory of majority vote, if you had two out of three, what would be the point here?

Ms. HANLEY. Let me go back. I think that is suggesting that one vote from the suburbs represented all the suburbs, that there was—the suburbs were all the same, and, therefore, one vote, a seven—using one vote did not recognize that the suburbs were—I mean assumed the suburbs were a monolith.

Ms. NORTON. Well, I mean you can say that of the whole agreement. It really does take us back to step one, if that's your theory.

Ms. HANLEY. Well, I think there's also the concern, and as you look at, I guess, the last person to testify today, and his comments on the insurance of the—that points out that this is established—I think the interest in moving toward a true regional authority is because this is established under the District of Columbia law. And while it's not in the legislation, the authority then, it's my understanding, and I'm willing to be corrected, could be abolished by District of Columbia law. And so there is that concern as well as——

Ms. NORTON. Yes. Well, let me correct you, because if, in fact, the District abolished it, that matter would then come to the Congress of the United States, because every bill the District passes has to do so. So the District could not singlehandedly abolish authority that had the approval of the Congress of the United States.

Ms. HANLEY. And I think that defines some of the issues as to why we're here before the Congress of the United States.

Mr. DAVIS. If you could yield for just a second. Mrs. Hanley has, of course, served on the Metro board——

Ms. HANLEY. Yes.

Mr. DAVIS [continuing]. And is head of the Virginia Association of Counties, Virginia Municipal League. And at Metro you need more concurrence. I mean I think that has been the model for the region; is that correct, Ms. Hanley?

Ms. HANLEY. At Metro, you need a concurrence from all—the jurisdictions are considered Virginia, as you know, the District of Columbia, and Maryland, and you need one—you can't have one particular jurisdiction objecting in a veto; sort of the reverse here. But not requiring each suburban jurisdiction, the request wouldn't require each suburban jurisdiction to be in the affirmative in this proposal. But, yes, it has the same kind of——

Ms. NORTON. And that is the point I want to make, that is a regional authority, this is not. We may, in fact, get there. One of the things you want to do is to keep from poisoning the well. We don't know; there's a study that's going to take place on that. It is not beyond the pale that, for whatever reasons, the District might agree to that. But the notion of trying to get there, in part through this legislation, is a dangerous way to approach this issue. If you want it to happen, then, it seems to me, rather than trying to make it happen, de jure and de facto before the study, invites the District to resist. It is not a very good way to negotiate in a regional way. And certainly I object totally to using Metro, which is obviously already a regional authority. No, it's not just you. That really is the model. Ms. Hanley spoke of Metro. It really is the model.

Ms. HANLEY. And so did Mr. Romer; we've all spoken of it.

Ms. NORTON. Yes. We're not there yet. And you may get there or you may keep yourself from getting there by trying to get there

in advance of a fair process where everybody in fact discusses the matter back and forth, brings everybody along. This region has got to act in this cooperative way if it wants to do difficult things. And I am not saying that the underlying notions that you express are incorrect. I am saying that one way to torpedo good feeling and even the possibility of the ultimate objective is to move before circumstances dictate. There's going to be a study of this. That may give you ammunition. But to move toward models that would otherwise be regional, at this point, I just want to say for the record, may not—may cause you to lose more than you gain.

Could I ask one other question of the parties. There is a study to be done that examines the prospect of privatization. How was that put into the mix and what is your view about that, the study?

Mr. LEIDINGER. Our views, all along, that is the Blue Plains Committee that operates under the current IMA, our views all along have been that we welcome any opportunity to review privatization for operation, maintenance, and repair of the plant, if it makes good business sense.

Ms. NORTON. Well, suppose the authority was set up tomorrow; what would you do tomorrow, given the fact that you have to have a study before you went to privatization?

Mr. LEIDINGER. Well, I would—speaking for myself, I would hope that each of the discrete business decisions that the authority must face with respect to what it's going to do and how it's going to do would include in that consideration whether or not it would be appropriate, beneficial to contract out that service rather than do it in-house.

Ms. NORTON. A lot of the work is contracted out now, isn't it?

Mr. LEIDINGER. Sure. A lot of work is already contracted out.

Ms. NORTON. Do you know what percentage of the work is contracted out?

Mr. ROMER. I don't know. But I think, as Bill indicated, that would just be a managerial decisionmaking process by the new board, where any concept of privatization, small, medium, or large, would be brought to the board. The board would determine and direct what information it needed to make—to get in a decisionmaking mode and then move forward in a very policymaking board-like manner to assess the information and decide whether it made sense or not.

Ms. NORTON. That has to be in order to be 100 percent sure; professional judgment.

Thank you, Mr. Chairman.

Mr. DAVIS. Thank you, Ms. Norton.

Mr. LEIDINGER. Mr. Chairman, if I may——

Mr. DAVIS. I just want to say I think we can all see why she was a very successful teacher of that course on negotiations.

Mr. LEIDINGER. I would like to go back, though, and while not readdressing that subject, just maybe address one of the tenets of perhaps Mrs. Norton's feeling. I don't think we're here today that push an issue that we were unable to successfully negotiate regarding the eight votes. When we talked with this issue about the District of Columbia, we were told the same thing that you were this morning by the counsel, corporation counsel of the District. That is for legal reasons, they couldn't do it. We're here talking to the folks

that make the laws for the District of Columbia. We're seeking a change in the law to make it happen. We're not pursuing unsuccessful negotiation, and I think it's important for that to be said and understood by all of you.

Ms. NORTON. I'm sorry. You're here talking to people who make the laws for the District of Columbia?

Mr. LEIDINGER. Well, beginning here today with the subcommittee.

Ms. NORTON. We do not make the laws for the District of Columbia; just let me make that clear. I can understand why it may seem that way. There are only four laws in the District of Columbia that's ever made in 23 years of home rule that have been overturned by the Congress. And the chairman has been respectful of home rule for the same reason that you would want the State of Virginia to be respectful of home rule. And we don't overturn laws of the District of Columbia. This committee—I'm going to put this right on the record, Mr. Chairman: This subcommittee's view in the past has been there are only three circumstances by which you can overturn the laws of the District of Columbia; they're unconstitutional, they violate Federal law, or they violate the Federal presence. That is why—and I'd hate to see that record broken. I do regard it as bringing to Congress—getting a second bite of the apple. These things have to be negotiated out. They can be. And I repeat my statement: To the extent that you leap over the District, you—this is a city that feels very strong about home rule, because it is second per capita in Federal taxes in the United States, and ends up having people intervene into its business. And my job is to keep that from happening.

Mr. LEIDINGER. Yes.

Ms. NORTON. And I'm going to try my best to keep it from happening. So this is not—you are under a misimpression if you believe that this is the place to come with District law.

Mr. DAVIS. Thank you. Reclaiming my time——

Ms. NORTON. No, it wasn't your time; it was mine.

Mr. DAVIS. No, it was mine, and I asked him a question, and I was happy to yield to you, so you could make your statement. This is the committee jurisdiction over the District in ordinance changes and the like, and, of course, we're very reluctant to enter into interference with them. But we have the appropriate oversight responsibility. And the Authority would start here and would have to go through a long chain. So I think Mr. Leidinger understands that. I think that's what he meant by it. But I understand we're all being sensitive to the city because, in point of fact, they need congressional action to make this go further. Without congressional action, they are not, under their ordinances, allowed to set up the escrow accounts and the like that are needed to make this go.

Mr. Leidinger, do you want to continue in any vein?

Mr. LEIDINGER. No.

Mr. DAVIS. Ms. Hanley, let me just ask just a couple more questions, for the record, and then I'll——

Ms. HANLEY. I think they may have been asked.

Mr. DAVIS. I just——

Ms. HANLEY. OK.

Mr. DAVIS. Did Mrs. Morella ask about the decisions to privatize Blue Plains and the procedures that we have for consultant counties prior to any decision being made and are you all comfortable with that?

Ms. HANLEY. Yes, we covered that.

Mr. DAVIS. OK. The last question I want to ask is would each of you explain what capital funds and EPA grants of yours may have gone to Blue Plains? Are any of you prepared to answer that or you could supplement that. Mr. Stone, would you like to supplement that?

Mr. STONE. Yes.

Mr. DAVIS. You probably weren't prepared to answer that when you came in. Mr. Romer.

Mr. ROMER. That collective $346 million——

Mr. DAVIS. Would include——

Mr. ROMER [continuing]. Information for Prince Georges and Montgomery.

Mr. DAVIS. That would include those EPA grants and capital funds?

Mr. LEIDINGER. We'll get back to you with that.

Mr. DAVIS. That will be fine. You can supplement the record. Otherwise, we appreciate very much your being here, your perspective on this, and your willingness to cooperate with this. I think, as this moves through, we have made significant progress that would not have been made but for the people sitting at this table, working with the District of Columbia to move this forward—and we're going to have a better product at the end of this then we did, going back a year ago. So I know Mrs. Norton joins me, as she said before, in thanking all of you for your work to date. Thank you very much.

Mr. LEIDINGER. Thank you.

Mr. DAVIS. Our next witness is Representative Hoyer. Steny, good morning. Welcome. Thank you for being with us today. I know you've got a lot of things going on in Appropriations and elsewhere. This is a matter you've expressed to me with great concern.

STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOYER. Thank you, Mr. Chairman, and my colleague, Ms. Norton. I want to thank both of you for this opportunity to appear before the subcommittee and to speak on an issue of obviously great importance to my constituents and the region. I am pleased to offer a statement on the proposed legislation which would provide the newly established District of Columbia Water and Sewer Authority with necessary bonding authority.

Over the past year, several reports have been issued delineating serious operations and management problems at the Blue Plains Wastewater Treatment Facility; that is not only concerned, obviously, the representatives and leaders of the District of Columbia, but all of the suburban users as well. If certain conditions persist at Blue Plains, this will pose, in addition, a serious threat to the health and safety of sewage ratepayers and residents of the metropolitan area who live downstream from the flow of untreated sewage, many of whom—or most of whom I represent on the Maryland

side of the river. Moreover, it could have a devastating impact on the fragile environmental conditions of the waterways, all of which we're concerned about. As a matter of fact, Ms. Norton and I, for many years, have been working on the Anacostia with a great deal of effort.

One of my top priorities is to ensure proper cleanup and preservation of the waterways in the Chesapeake Bay Basin, including, of course, the Potomac, the Anacostia, which I mentioned, and the Patuxent. As a matter of fact, I participated, just the other day, in a wade in. I don't know how many of you know about Senator Fowler's wade in in the Patuxent to see how far he has to go before he loses sight of his feet; a very unscientific but dramatic display of the river not being as clean as it once was. I have been, in addition, working on issues of improving water quality for a long time, and we're making progress. Therefore, I strongly support measures which would allow us to continue improving the environmental integrity of the vast waterways in the Washington region.

Now, I have been involved in numerous meetings with individuals testifying before you here today and with others concerned about problems which have plagued the Blue Plains facility. We all agree that steps should be taken which would allow for more efficient and environmentally safe operation of the plant.

The new water and sewer authority, created by the District of Columbia, along with the agreements worked out with the Environmental Protection Agency and the Department of Justice, in my opinion, should vastly improve the Blue Plains situation. This new authority should move us a step closer to ensuring protection of human health and the environment while providing for better operations, proper equipment, financial stability, and sufficient staffing levels at the largest wastewater treatment facility in the country.

While I believe, Mr. Chairman and Ms. Norton, that establishment of this authority is a positive step in the right direction, it is necessary for me to address another issue. During fiscal year 1994, over $80 million was transferred from the District's water and sewer enterprise fund to the District's general account. The Blue Plains account budget falls within this budget. I believed, as did others, that one of the best ways to resolve the operational and management problems at suburban jurisdictions was to restore the funds taken from the account and prohibit the further transfer of any additional funds, which obviously result from the payments from all the ratepayers throughout the region. As a result, Mr. Chairman, I included report language in the fiscal year 1996 District of Columbia appropriations bill, which asked the financial responsibility and management assistance authority to address how the District planned to restore funds taken from the Blue Plains budget and the timing for that restoration. It is my understanding that arrangements have in fact been made to restore the $83 million. The District has made a determination to pay $20 million per year for the next 4 years in order to restore these funds, and this money is included, as I understand it, in its current financial plan.

In an effort to alleviate some of the concerns of ratepayers in Maryland and Virginia, I would like to suggest that that—that language be included in the proposed bill which clearly lays out that undertaking that the District of Columbia has already expressed.

In addition, I want to add that the fiscal year 1996 omnibus appropriation bill included a lockbox for moneys currently being paid into the water and sewer account. The money in this account is now separated from other city accounts and can no longer be diverted to pay other District bills. The Appropriations Committee, the EPA, and the District worked together in getting assurances on this. The lockbox will serve as a temporary fix until the new authority takes over.

The new authority would provide a permanent fix by isolating the funds of the authority from the funds in the District's general budget. This underscores, of course, the importance for providing the authority with bonding authority. It must be given the power to raise capital to operate and make much needed improvements in the facility. I urge the committee, Mr. Chairman, to move forward with this legislation, which puts the necessary teeth in the District approved legislation establishing the authority.

I also want to commend Ms. Norton and the District of Columbia for adhering to the "good neighbor" policy by working closely with the suburban jurisdictions and other entities to work out reasonable compromises on areas of concern. I hope this kind of cooperation will continue as the new water and sewer authority begins to move forward with its agenda.

All of us who serve in the metropolitan delegation are sensitive to the normal operating bumping and shoving that occurs within any metropolitan region. It is exacerbated, of course, in the Washington metropolitan area because of the unique status of the District of Columbia and the very significant concerns expressed just a little earlier by Ms. Norton, as she properly does, about the status of the District of Columbia and ensuring that the Authority of the District of Columbia is not continually undermined.

At the same time, it is known to the District of Columbia and known to all of us who represent the Washington metropolitan surrounding area that the surrounding area does in fact come to its representatives from time to time, when it feels aggrieved, and says, We want you to do something. Like most representatives do, and like Ms. Norton does, we try to respond to those concerns, but it does cause bumping and shoving. To the extent that we can work out things cooperatively, we are all better off. I think this authority moves in that direction. As Ms. Norton knows, we've had some bumping and shoving ourselves, in terms of Blue Plains in particular, when there was the user fee to which you referred a little earlier. We thought that that was, frankly, contrary to the contract that we had among ourselves. One could argue about that, but that was our feeling, and so we took actions to preclude. I don't want to speak for Ms. Norton. I think Ms. Norton's view was they probably shouldn't have done it and we probably shouldn't have done anything legislatively to stop them from doing it, because that wasn't the appropriate avenue.

But, having said that, Mr. Chairman, I appreciate this opportunity to appear and to make a few suggestions. I think this legislation is important, and I'm hopeful that it will move forward quickly.

[The prepared statement of Hon. Steny H. Hoyer follows:]

Steny Hoyer

I WANT TO THANK CHAIRMAN DAVIS AND MY COLLEAGUES ON THE DISTRICT OF COLUMBIA OVERSIGHT SUBCOMMITTEE FOR GIVING ME THE OPPORTUNITY TO SPEAK TODAY ON AN ISSUE OF UTMOST IMPORTANCE TO MANY OF MY CONSTITUENTS LIVING IN THE FIFTH CONGRESSIONAL DISTRICT OF MARYLAND. I AM PLEASED TO OFFER A STATEMENT ON THE PROPOSED LEGISLATION WHICH WOULD PROVIDE THE NEWLY ESTABLISHED DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY WITH NECESSARY BONDING AUTHORITY.

OVER THE PAST YEAR, SEVERAL REPORTS HAVE BEEN ISSUED DELINEATING SERIOUS OPERATIONS AND MANAGEMENT PROBLEMS AT THE BLUE PLAINS WASTEWATER TREATMENT FACILITY. IF CERTAIN CONDITIONS PERSIST AT BLUE PLAINS, THIS WILL POSE A SERIOUS THREAT TO THE HEALTH AND SAFETY OF SEWAGE RATE PAYERS AND RESIDENTS OF THE METROPOLITAN AREA WHO LIVE DOWNSTREAM FROM THE FLOW OF UNTREATED SEWAGE. MOREOVER, IT COULD HAVE A DEVASTATING IMPACT ON THE FRAGILE ENVIRONMENTAL CONDITIONS OF THE WATERWAYS.

AS YOU KNOW, ONE OF MY TOP PRIORITIES IS TO ENSURE PROPER CLEANUP AND PRESERVATION OF THE WATERWAYS IN THE CHESAPEAKE BAY BASIN INCLUDING THE POTOMAC, ANACOSTIA, AND PATUXENT RIVERS. AS A MATTER OF FACT, I PARTICIPATED IN A "WADE IN" OF THE PATUXENT RIVER THIS PAST SUNDAY WITH FORMER STATE SENATOR BERNIE FOWLER. I HAVE BEEN WORKING ON ISSUES OF IMPROVING WATER QUALITY FOR A LONG TIME AND I CAN TELL YOU THAT WE ARE MAKING PROGRESS. THEREFORE, I STRONGLY SUPPORT MEASURES WHICH WOULD ALLOW US TO CONTINUE IMPROVING THE ENVIRONMENTAL INTEGRITY OF THE VAST WATERWAYS IN THE WASHINGTON REGION.

I HAVE BEEN INVOLVED IN NUMEROUS MEETINGS WITH INDIVIDUALS

TESTIFYING BEFORE YOU HERE TODAY AND WITH OTHERS CONCERNED ABOUT PROBLEMS WHICH HAVE PLAGUED THE BLUE PLAINS FACILITY. WE ALL AGREED THAT STEPS SHOULD BE TAKEN WHICH WOULD ALLOW FOR MORE EFFICIENT AND ENVIRONMENTALLY SAFE OPERATION OF THE PLANT.

THE NEW WATER AND SEWER AUTHORITY CREATED BY THE DISTRICT OF COLUMBIA, ALONG WITH AGREEMENTS WORKED OUT WITH THE ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF JUSTICE, SHOULD VASTLY IMPROVE THE BLUE PLAINS SITUATION. THIS NEW AUTHORITY SHOULD MOVE US A STEP CLOSER TO ENSURING PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT WHILE PROVIDING FOR BETTER OPERATIONS, PROPER EQUIPMENT, FINANCIAL STABILITY, AND SUFFICIENT STAFFING LEVELS AT THE LARGEST WASTEWATER TREATMENT FACILITY IN THE COUNTRY.

WHILE I BELIEVE ESTABLISHMENT OF THIS AUTHORITY IS A POSITIVE STEP IN THE RIGHT DIRECTION, IT IS NECESSARY FOR ME TO ADDRESS ANOTHER ISSUE. DURING FISCAL YEAR 1994, OVER $80 MILLION WAS TRANSFERRED FROM THE DISTRICT'S WATER AND SEWER ENTERPRISE FUND TO THE DISTRICT'S GENERAL ACCOUNT. THE BLUE PLAINS ACCOUNT BUDGET FALLS WITHIN THIS BUDGET. I BELIEVED, AS DID OTHERS, THAT ONE OF THE BEST WAYS TO RESOLVE THE OPERATIONAL AND MANAGEMENT PROBLEMS AT BLUE PLAINS WAS TO RESTORE THE FUNDS TAKEN FROM THE BLUE PLAINS ACCOUNT AND PROHIBIT THE FURTHER TRANSFER OF ANY ADDITIONAL FUNDS. THEREFORE, I INCLUDED REPORT LANGUAGE IN THE FISCAL YEAR 1996 DISTRICT OF COLUMBIA APPROPRIATIONS BILL WHICH ASKED THE FINANCIAL RESPONSIBILITY AND MANAGEMENT ASSISTANCE AUTHORITY TO ADDRESS HOW THE DISTRICT PLANNED TO RESTORE FUNDS TAKEN FROM THE BLUE PLAINS BUDGET AND THE TIMING FOR THAT RESTORATION. IT IS MY UNDERSTANDING THAT ARRANGEMENTS HAVE BEEN

MADE TO RESTORE THE $83 MILLION. THE DISTRICT HAS AGREED TO PAY $20 MILLION PER YEAR FOR THE NEXT FOUR YEARS IN ORDER TO RESTORE THESE FUNDS AND THIS MONEY IS INCLUDED IN ITS CURRENT FINANCIAL PLAN.

I WANT TO MAKE IT ABSOLUTELY CLEAR AND ON THE RECORD THAT THE DISTRICT OF COLUMBIA IS RESPONSIBLE FOR REPAYING THIS DEBT. IN AN EFFORT TO ALLEVIATE SOME OF THE CONCERNS OF RATEPAYERS IN MARYLAND AND VIRGINIA, I WOULD LIKE TO SEE LANGUAGE INCLUDED IN THE PROPOSED BILL WHICH CLEARLY LAYS OUT HOW THE PAYMENTS ARE TO MADE AND THE TIMING FOR THOSE PAYMENTS.

IN ADDITION, I WANT TO ADD THAT THE FISCAL YEAR 1996 OMNIBUS APPROPRIATION BILL INCLUDED A LOCKBOX FOR MONIES CURRENTLY BEING PAID INTO THE WATER AND SEWER ACCOUNT. THE MONEY IN THIS ACCOUNT IS NOW SEPARATED FROM OTHER CITY ACCOUNTS AND CAN NO LONGER BE SIPHONED OFF TO PAY OTHER DISTRICT BILLS. THE APPROPRIATIONS COMMITTEE, EPA, AND THE DISTRICT WORKED TOGETHER IN GETTING ASSURANCES ON THIS. THIS LOCKBOX WILL SERVE AS A TEMPORARY FIX UNTIL THE NEW AUTHORITY TAKES OVER.

THE NEW AUTHORITY WOULD PROVIDE A PERMANENT FIX BY ISOLATING THE FUNDS OF THE AUTHORITY FROM THE FUNDS IN THE DISTRICT'S GENERAL BUDGET. THIS UNDERSCORES THE IMPORTANCE FOR PROVIDING THE AUTHORITY WITH THE BONDING AUTHORITY. IT MUST BE GIVEN THE POWER TO RAISE CAPITAL TO OPERATE AND MAKE MUCH NEEDED IMPROVEMENTS AT THE FACILITY. I URGE THE SUBCOMMITTEE TO MOVE FORWARD WITH THIS LEGISLATION WHICH PUTS THE NECESSARY TEETH IN THE DISTRICT APPROVED LEGISLATION ESTABLISHING THE AUTHORITY.

I ALSO COMMEND THE DISTRICT OF COLUMBIA FOR ADHERING TO THE

"GOOD NEIGHBOR" POLICY BY WORKING WITH CLOSELY WITH THE SUBURBAN JURISDICTIONS AND OTHER ENTITIES TO WORK OUT REASONABLE COMPROMISES ON AREAS OF CONCERN. I HOPE THIS KIND OF COOPERATION WILL CONTINUE AS THE NEW WATER AND SEWER AUTHORITY BEGINS TO MOVE FORWARD WITH ITS AGENDA.

AGAIN, I WANT TO THANK THE SUBCOMMITTEE FOR ALLOWING ME TO TESTIFY AND FOR KEEPING ME INFORMED ABOUT THIS MATTER.

Mr. DAVIS. Steny, thank you very much for your statement and for your leadership on this and so many other issues of regional significance. I don't think I have any questions, but we're going to take note of your comments and see that we get the appropriate inclusions, and I think they were good substantive comments. Ms. Norton, any questions?

Ms. NORTON. Well, I want to thank Mr. Hoyer for taking the time to come here today. Mr. Hoyer has—this region works at the congressional in the most collegial of fashions. And Mr. Hoyer has been the leader of the region and has always worked to make sure that we try to do everything together, even when, in fact, we disagreed. And the region has been able to do a lot for the region because of that collegiality, and Mr. Hoyer deserves mammoth credit for the Metro system, the only Metro system that has the financial support of the Congress in spades. Others are envious of it. It was his work, and it ought to be said for the record.

I want to assure Mr. Hoyer that his concern about the repayment of the money has been, I think, the issue that the District most had to answer for, and that I don't believe it needs to be included in this bill, because it will be included in a bill over which you have jurisdiction. That is to say there is—the multiyear plan requires the District to set aside very significant amounts of money every year in order to pay that back, and it's in its budget. That budget will come before you. And there is no doubt in my mind, if the District refuses to set aside the amount, that you will personally take care of it. And that is a more powerful document than this bill.

Finally, I want to thank Mr. Hoyer for what he said about the river. It is absolutely the case that this has been a regional project virtually. Mrs. Morella has worked with us. It has crossed all party lines. And now to have any threat to our work on the river would simply undermine really years of work, years before I even got here. And your environmental concern was at the top of my list. And I am pleased to report, as I think the EPA will testify, that, again, working cooperatively, we've been able to get the agreements necessary to attend to the very serious environmental threats that were posed by the way the facility was being run.

Thank you again for coming here, Steny.

Mr. HOYER. Thank you.

Mr. DAVIS. Thank you. Let me just recognize Mrs. Morella.

Mrs. MORELLA. I just want to thank you, Steny, for appearing before this subcommittee, on which I do not serve, but I'm here because of the very point of the regional cooperation that has been stressed. It is true that we do work together for the entire region, and indeed you've been a leader in that area. So thank you for coming.

Mr. HOYER. I thank both Ms. Norton and Mrs. Morella for their comments and also you, Mr. Chairman. And I want to say, on behalf of the metropolitan delegation, the chairman is the junior member of our delegation, but he has brought to his role, because of the unique and tragic circumstances which have led to the——

Mr. DAVIS. The chairman need not—as long as you don't say temporary.

Mr. HOYER. No; I'm thinking that, but I won't say it. But the fact of the matter is, Tom Davis, Tom, you've done an outstanding job,

in my opinion, in reaching out, as we should from the suburbs, and make sure that the relationship between the suburbs and the central part of our region, the District of Columbia, is healthy and as healthy as we can make it, and that the relations between us are as positive as we can make them. And it's a shame the public does not see the cooperative efforts as much as it sees the confrontations, and it therefore concludes that it's always confrontation, when that's not the case. And your leadership has been very, very positive in that respect, and I know all of us appreciate that.

Mr. DAVIS. Thank you. If you want any more time, you can go on. No? Thank you very much.

Mr. HOYER. Thank you, Mr. Chairman. Thank you.

Mr. DAVIS. Thank you very much.

Our last panel will be Michael McCabe, who is the regional administrator of EPA region 3, and Mr. Henri Gourd, the vice president and manager of MBIA Insurance Corp. I appreciate—let me just thank EPA for allowing MBIA to sit with them. Mr. McCabe, welcome back. I appreciate EPA's working with the District and the subcommittee. Mr. Gourd, I know that you have worked extensively with the subcommittee staff on the financial aspects of this matter. I deeply appreciate your willingness to come forward on a voluntary basis and help us. MBIA is a disinterested party that can serve as an objective commentator on the District's legislation and our proposed Federal legislation.

As you know, it's the policy of the committee that all witnesses be sworn. If you'd just raise your right hands.

[Witnesses sworn.]

Mr. DAVIS. Thank you very much. Mr. McCabe, you can proceed, and Mr. Gourd will follow.

STATEMENTS OF W. MICHAEL McCABE, REGIONAL ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3; AND HENRI GOURD, VICE PRESIDENT/MANAGER, MBIA INSURANCE CORP., ACCOMPANIED BY DINAH BELLIS, SENIOR EXPERT, WATER AND UTILITY SYSTEMS, MBIA; AND TIMOTHY McKEON, SENIOR EXPERT, WATER AND UTILITY SYSTEMS, MBIA

Mr. MCCABE. Thank you, Mr. Chairman, Congresswoman Norton, and Congresswoman Morella, and other members of the committee. I appreciate having the opportunity to address the issue of the District of Columbia's Water and Sewer Authority with you again this morning.

As the chairman noted, I am Michael McCabe, regional administrator for the U.S. Environmental Protection Agency, region 3.

And, as you know, EPA region 3 has had extensive involvement with a number of the concerns that are before the subcommittee this morning. Back on February 23 of this year, I testified about a lengthy list of environmental problems that we had identified at the Blue Plains Wastewater Treatment Plant and in the District's drinking water distribution system. As I noted at the time, the financial crisis that is gripping this city, perhaps not surprisingly, has had a devastating effect on the proper operation of these systems. I told this panel then that, "The drinking water and wastewater systems in the region are in serious trouble." I am

pleased to report that the situation has improved since then, largely because of an agreement EPA and the Department of Justice reached with the District of Columbia to address some of the major concerns that I highlighted in that testimony.

I concluded my February 23 testimony with the following words:

> I would respectfully suggest that the Congress give serious consideration to new financing systems for both the drinking water distribution and wastewater treatment systems, including the establishment of separate accounts for the collection and disbursement of grant payments and revenues for operation and maintenance. In addition, some form of regional water and sewer authority that represents the interests of all jurisdictions served by these facilities is crucial so that the systems can make the major capital improvements that are critical to the health and safety of the people living in this region and protection of the local environment.

Today a new authority is close to reality, and I am pleased to add my voice to those speaking today in favor of this legislative effort to solve a truly important environmental problem for the people of Washington.

I want to highlight three major elements of this joint D.C. government and congressional action that are of particular importance to the EPA. First is establishing an independent authority. Taking water and sewer operations out of the District's Department of Public Works is the fundamental action being taken by the District, and it is clearly the most important. An independent authority can focus on its mission and avoid becoming enmeshed in the serious financial problems that the city currently faces. This independence, which is emphasized in the amendments adopted by council last week, is reflected in both the financial and operational integrity of the new authority. Breakdowns on these fronts in the past have led to the serious problems at both the Blue Plains facility and in the city's drinking water distribution system.

Two, requiring the authority to implement sound management practices. In particular, I would note that the amendments just adopted by the council require sound procurement policies and also detailed long-range planning, including a multiyear financial plan for capital and operating expenses encompassing at least the forthcoming 5 fiscal years. This kind of thoughtful practice has not been possible to implement over the last several years, and is a key component of a stable and secure water and sewer system.

Three, giving the authority the borrowing capacity to carry out its mission. While many of the immediate concerns about the regional drinking and wastewater systems can be addressed through the financial and operational independence inherent in the legislation approved by the District council, the long-term health of the operation depends on the ability of the new authority to float bonds and meet its ongoing financial obligations. Running a topnotch water and sewer system that serves more than 2 million customers involves huge financial commitments that must be administered over very long periods of time. The borrowing capacity that you are considering is an integral part of making this entire effort successful.

As I noted in my testimony earlier this year, the EPA views public participation as an important component of effective environmental protection, and that is why I spoke about the need for an authority that represents the interest of all jurisdictions served by these facilities. Others here today have spoken much more directly

about the changes adopted by the council last week that broaden the user jurisdiction's participation on the board of the new authority. Suffice it to say that we view these changes as a positive contribution to the establishment of an effective authority.

Let me also positively note the change to section 218 of the authority legislation adopted last week by the council. This simple language change makes it clear that the authority is the successor organization for the various permits, orders, agreements, and other formal arrangements governing the wastewater and drinking water systems formerly under the city's department of public works. This would include, for example, the NPDES permit governing Blue Plains, the Stipulated Agreement and Order recently lodged with the court, and the 1995 consent decree.

That concludes my general testimony. But I would also like to personally commend Chairman Davis, Congresswoman Norton, and other members of the subcommittee for their leadership in revolving these important issues, for taking a personal interest in making sure that an authority was created, and for involving themselves personally in a lot of tough negotiations on this issue. I think it will serve the region's water and sewer users well, and, importantly, from EPA's standpoint, it will also serve to help protect public health and the environment.

Thank you.

[The prepared statement of Mr. McCabe follows:]

TESTIMONY OF
W. MICHAEL McCABE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3
BEFORE THE
SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA
OF THE
COMMITTEE ON GOVERNMENT REFORM & OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

June 12, 1996

Thank you Mr. Chairman, Congresswoman Norton and Members of the Committee. I appreciate having the opportunity to address the issue of the District of Columbia's Water and Sewer Authority with you again this morning.

My name is W. Michael McCabe, and I am the Regional Administrator for the United States Environmental Protection Agency (EPA), Region 3.

As you know, EPA Region 3 has had extensive involvement with a number of the environmental concerns that are before the Subcommittee this morning. Back on February 23 of this year I testified about a lengthy list of environmental problems that we had identified at the Blue Plains Waste Water Treatment Plant and in the District's drinking water distribution system. As I noted at that time, the financial crisis that is gripping the City was, perhaps not surprisingly, having a devastating effect on the proper operation of these systems. I told this panel that, "The drinking water and waste water systems in the region are in serious trouble."

I concluded my February 23 testimony with the following words:

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collection and disbursement of grant payments and revenues for operation and maintenance. In addition, some form of regional water and sewer authority that represents the interests of all jurisdictions served by these facilities is crucial so that the systems can make the major capital improvements that are critical to the health and safety of the people living in this region and protection of the local environment.

Today, I am pleased to note that this series of recommendations is about to be put into place, and so I am happy to add my voice to those speaking today in favor of this legislative effort to solve a truly important environmental problem for the people of the Washington region.

I want to highlight three major elements of this joint D.C. Government and Congressional action that are of special importance to the EPA:

- **Establishing an independent authority**. Taking water and sewer operations out of the District's Department of Public Works is the fundamental action being taken by the District, and it is clearly the most important. An independent authority can be focused on its mission and avoid becoming enmeshed in the serious financial problems that the City currently faces. This independence, which is emphasized in the amendments adopted by the Council last week [see especially Section 101(4) "Creation of an independent authority with secure funding separated from the District's General Fund..."], is reflected in both the financial and operational integrity of the new authority. Breakdowns on these fronts in the past have lead to the serious problems at both the Blue Plains facility and in the City's drinking water distribution system.

- **Requiring the Authority to implement sound management practices.** In particular, I would note that the amendments just adopted by the Council (amendments to Section 205) require sound procurement policies and also detailed long-range planning, including a "multiyear financial plan for capital and operating expenses encompassing at least the forthcoming five fiscal years." This kind of thoughtful practice has not been possible to implement over the last several years, and is a key component of a stable and secure water and sewer system.

- **Giving the Authority the borrowing capacity to carry out its mission.** While many of the immediate concerns about the regional drinking and waste water systems can be addressed through the financial and operational independence

inherent in the legislation approved by the District Council, the long-term health of the operation depends on the ability of the new Authority to float bonds and meet its on-going financial obligations. Running a top-quality water and sewer system that serves more than 2 million customers involves a huge financial commitment that must be administered over very long periods of time. The borrowing capacity legislation that you are considering is an integral part of making this entire effort successful.

As I noted in my testimony earlier this year, the EPA views public participation as an important component of effective environmental protection and that is why I spoke about the need for an Authority "that represents the interests of all jurisdictions served by these facilities...." Others here today can speak much more directly about the changes adopted by the Council last week that broaden the user jurisdiction's participation on the Board of the new Authority. Suffice it to say that we view these changes as a positive contribution to the establishment of an effective Authority.

Let me also positively note the change to Section 218 of the Authority legislation adopted last week by the Council. This simple language change makes it clear that the Authority is the successor organization for the various permits, orders, agreements and other formal arrangements governing the waste water and drinking water systems formerly under the City's Department of Public Works. This would include, for example, the National Pollutant Discharge Elimination System (NPDES) permit governing Blue Plains, the Stipulated Agreement and Order recently lodged with the Court, and the 1995 Consent Decree.

Before I conclude my remarks, let me take this opportunity to up-date the Subcommittee on actions that have taken place regarding the region's wastewater and drinking water systems since I appeared before you four months ago.

- As you know, on April 5, 1996, the EPA and the Department of Justice filed a complaint against the District of Columbia in federal court alleging violations of the Clean Water Act stemming from Blue Plains Wastewater Treatment Plant. At the same time we filed a proposed settlement (technically, a "Stipulated Agreement and Order") with the District that requires the City to take steps to assure the proper operation and maintenance of the plant and to rehabilitate and overhaul outmoded equipment. This settlement is currently pending before the Court. Last Friday, June 7, we filed a motion formally requesting that the Court approve the settlement. We also replied to Virginia's motion to intervene and stated that we generally do not object to the State's participation. The settlement provides important immediate protection for the environment to assure that water quality and public health will be protected during the transition to the new Water and Sewer Authority. The District agreed to comply with the requirements of the settlement immediately rather than waiting for Court approval, and the data available so far show that the District is complying with the settlement terms and the requirements of its NPDES permit.

- On April 25, 1996, the Congress adopted the Conference Report on H.R. 3019, the so-called Omnibus Appropriations Act for FY96. Working with Congressman Walsh's appropriations Subcommittee, the EPA was able to secure language in this law that established a "lockbox" for water and sewer funds collected by the City. This current year "fix" is a temporary measure to assure that no further funds can be diverted from the old Enterprise Fund to support unrelated City expenditures. The new Authority legislation contains provisions that will require all funds be paid directly to the Authority and explicitly forbids any further diversion of funds. While we would have preferred that the authorizing legislation adopted by the Council include a date-certain for the transfer of this operation, we believe that both the Appropriations language that the Congress has approved as well as the provisions in the Authority legislation provide assurance that the water and sewer funds cannot again be diverted to other City functions.

- Last Fall EPA Region 3 issued a Proposed Administrative Order to D.C. for problems with the operation of its drinking water distribution system. On April 9, 1996, the Region conducted an informal public meeting in Washington on this issue and then conducted a formal public hearing on April 17, 1996, to collect testimony from interested parties about the proposed order. The public comment period closed on May 1, 1996, and since then my staff has conducted at least weekly teleconferences with the District in an effort to finalize the Administrative Order. We hope to complete an Administrative Order on Consent with the District by the end of this month with the effective date sometime later this summer.

- Finally, let me note that the NPDES permit for the Blue Plains facility expired earlier this year. On May 10, 1996, the Region issued a draft permit to the District for Section 401 certification. The City requested an extension to comment on the draft and we have given the City until July 15 to do so.

In short, the Region continues to take aggressive steps to protect the health and safety of the residents of Washington and the surrounding communities and to protect the aquatic environment of the Potomac River and the Chesapeake Bay. We will continue to do so. In the meantime we urge the Subcommittee to act expeditiously to approve the solid work of the District of Columbia government in establishing an independent Water and Sewer Authority and providing that Authority with the borrowing ability it needs to function effectively.

Thank you again, Mr. Chairman, for giving me the chance to appear before the Subcommittee, and I would be happy to answer any questions you might have.

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Mrs. MORELLA [presiding]. I want to thank you, Mr. McCabe, for your testimony, and also I recognize within the record will also be the actions that you have taken and have been taking since you appeared before the committee, that you have outlined in your written testimony.

I'd like to ask you, before I go to Mr. Gourd, I wondered if you would update the subcommittee on the status of Blue Plains the EPA's proposed administrative order and the legal action that is filed by the Justice Department.

Mr. MCCABE. Well, Congresswoman, last April, we entered into an agreement with the District government, we and the Department of Justice entered into an agreement, which identified the emergency actions that needed to be taken to address some of the principal concerns we had about the deteriorating facility. I am pleased to report that improvements have been made. There are a number of actions that have been taken under the agreement. In fact, in some instances, the District government has moved further than the agreement required them to move, in terms of bringing the facility back into operation and maintenance.

I might add, though, that I am concerned that a recent motion by the Commonwealth of Virginia to enter as an intervenor in this settlement has caused the agreement to be put in legal limbo. What has happened, in effect, is that we cannot enter the agreement with the court. So we don't have the court's backing. All we have right now is a handshake deal. I think it is proof that this was a good deal, that the District of Columbia has moved forward and moved forward aggressively to address the concerns outlined in the agreement. But because we don't have the court's backing, if in fact they should depart from the agreement, there really is no enforceable action that we can take, other than our regulatory authority, which we already have. So I would hope that the Commonwealth of Virginia, in the end, not oppose entering this agreement with the court, although we have heard that that is in fact their intention.

Mr. DAVIS [presiding]. Thank you very much. Do you have anything else to add at this point in your testimony?

Mr. MCCABE. But while you were out, I commended you for your leadership in putting this together.

I didn't want you to miss that.

Mr. DAVIS. I'm sorry I missed it. Thank you very much. It's very mutual.

Mr. Gourd, thank you for being here today. You're a very important component of this, as a neutral observer, and somebody to speak to probably one of the most complex part of putting a city authority with regional votes on it. So we are looking forward to your testimony. Thank you for being here.

Mr. GOURD. Thank you. Chairman Davis and members of the District of Columbia Subcommittee, good morning. My name is Henri Gourd, and with me are my colleagues, Dinah Bellis and Timothy McKeon, who are senior experts in the water and sewer utility systems at MBIA.

Mr. DAVIS. Thank you.

Mr. GOURD. We are each vice presidents of the largest municipal bond insurer and the guarantor of about $1 billion of the District's general obligation debt. Thank you for inviting us here today.

I would like to preface my remarks with two statements. First, our comments are reflective of our perspective as a guarantor of municipal bonds. And while we share many of the same credit perspectives as the rating agencies, we do not presume to represent their views nor the views of investment bankers or even other insurers.

Second, MBIA's comments should not be construed as a commitment to insure any future bonds of the District, agency, or authority of the District, including the contemplated water and sewer authority, which is the focus of today's hearings.

Over the last several months, we have discussed the proposed legislation with subcommittee staff. Today, we would like to address two global issues key to the successful spin off the water and sewer utility administration into a separate authority and to address nine related issues—to the proposed sale of revenue debt by the new authority. The first global issue is that a new entity that intends to issue debt by selling revenue bonds in the future must be independent from any other governmental body. This is especially true in the case of the proposed authority because of the below investment grade rating assigned to the District by the rating agencies.

The second global issue involves the collection of revenue and payment of expenses. Control of revenue stream by the issuing entity is critical to future bondholders. Only when a party that pledges its revenue to pay debt service actually controls the revenue stream can comfort be taken that the pledge can be enforced. In addition, control of the revenues by the authority will further underscore the authority's independence.

The nine issues related to a future bond sale of revenue bonds are aimed at maximizing the attractiveness of securities to the capital markets. First, on a general note, the conveyance of rights to the revenue stream of water and sewer rates, fees, and charges to the new authority should be in force and effect at least as long as any of the authority's bonds are outstanding. Typically this is not a major concern when an authority holds title to a plant. However, our understanding is that with respect to the proposed authority, title will remain with the District and the District retains the right to terminate the authority.

Second, while we recognize that the creation of a new authority involves several temporary and transition periods, one should not expect the bond market to embrace a new bond issue until the authority becomes a free-standing independent entity with its own accounts receivable and accounts payable system in place and a charter permanently approved. Until that time, the authority will not be viewed any differently from the existing water and sewer utility administration.

Third, the proposed legislation requires a study be done to examine the authority's operations 12 months after the first year of operation. Typically, for new authorities and for systems that are operating under EPA consent decrees, an outside engineering firm will conduct a baseline feasibility study in the early stages of oper-

ation or upon indication that the physical plant is not meeting the needs of customers or the requirements of the EPA. Such a study will include an assessment of the physical plant, determine the immediate and further capital needs, and be incorporated into a rate study that will then recommend the water and sewer rates required by the necessary resources to complete the capital program and to cover operating and debt service needs. It is often the case that annual followup assessments are done by an engineer to measure progress along the original baseline and modify its recommendations as needed.

Fourth, water and sewer rates are typically set by the Board of an authority with an engineer's input. The legislation is not clear as to whether the full board sets the rates or whether the District members of the board set the rates. From a bondholder's perspective, it is important that the rates reflect the needs of the system as a whole, covering expected capital needs, operation and maintenance expenses, and debt service expenses by a factor in excess of one. The level of additional debt service coverage, sometimes referred to as the rate covenant, varies from case to case and is usually negotiated at the time of the first bond sale.

Fifth, to protect against the dilution of revenue stream once the initial series of bonds are issued, there is usually a coverage test which must be met prior to the issuance of additional bonds. This is known as the additional bonds test. This test typically requires that historical revenues cover operation and maintenance and future debt service obligations by a comfort factor similar to the rate covenant. The language in the legislation requires only that sufficient revenues be raised. The distinction between one-time coverage to pay debt service and coverage that provides an extra level of comfort, in the event of unexpected shortfall in collection and increase, in collections or increase in expenses, is important.

Let me digress from the printed statement. "Sufficient" is a term of art, and may mean something different for you then it does for people in the bond world.

Sixth, it is common practice for an independent, outside accounting firm or engineering firm to certify that projected operating and debt service expenses will be covered by the rates in compliance with the bond document. The legislation does not require this.

Seventh, under the proposed legislation, transfers to the District are permitted to reimburse the city for services provided and to pay for that portion of debt service on general obligation bonds sold to finance the Blue Plains Authority. These are reasonable budgeted expenses and would not negatively impact the credit of the new authority. Looking beyond the budgeted expenses, to the surplus revenues; it is not unusual to have a strong utility operation transfer its surplus revenues, after payment of all expenses, to a city's general fund. However, a stronger pledge to holders of revenue bonds and one which will improve the authority's chance of market acceptance is what is called a closed loop. In this case, surplus revenues are retained by the authority and used to pay down bonds, fund capital projects, or subsidize future rates. They are prohibited from being transferred out of the authority.

Eighth, related to the cash-flow—or to the flow of funds referred to above, is the issue of what priority the payment of the general

obligation bonds previously issued by the District on behalf of the water and sewer utility administration have compared to the payment of the authority's new debt. Revenue bondholders would prefer a senior claim to these revenues.

Ninth, the presence of a debt service reserve fund to provide liquidity is customary for water and sewer revenue bonds. And we would recommend one be included in any future financing by the authority.

Finally, while not related to the credit worthiness of future authority bond sales, we feel that since a portion of the authorized transfers to the District are to cover the cost of general obligation bonds, it would seem appropriate that these revenues flow through the collection mechanism or lockbox currently used to funnel property tax pledged to pay the bond.

I would like to add, in addition, that while we have been working with the staff to help shape the legislature. We have tried to give one perspective of the capital markets to help finetune the legislation, so that you, knowing in advance what Wall Street or the bond market would be looking for, would be able to draft the legislation accordingly, in the most favorable vein for the new authority. In an earlier draft of my printed remarks, I pointed out that some of my comments would probably be best picked up by bond documents and not by the legislation that you're now contemplating. I don't mean to confuse the issue.

Neither my colleagues nor I pretend to be drafters of legislation, but it is our hope, by you knowing some of the key market concerns, that you might be able to make required changes. When a bond issuer comes to market, the covenant it makes with bondholders is through the bond documents. And the thrust of my comments were not intended to be critical but rather constructive in the formative stage of this legislative development.

We would be happy to answer any questions you have.

[The prepared statement of Mr. Gourd follows:]

Testimony by
Henri N. Gourd, Vice President
MBIA Insurance Corporation
before
The District of Columbia Subcommittee
of the House Committee on Government Reform and Oversight
June 12, 1996

Chairman Davis and members of the District of Columbia Subcommittee, good morning. My name is Henri Gourd and with me are my colleagues, Dinah Bellis and Timothy McKeon. We are each vice presidents of MBIA, the largest insurer of municipal bonds and the guarantor of about $1 billion of the District's general obligation debt. Thank you for inviting us here today.

I would like to preface my remarks with two statements. First, our comments are reflective of our perspective as a guarantor of municipal bonds. While we share many of the same credit perspectives as the rating agencies, we do not presume to represent their views nor the views of investment banks or even other insurers.

Second, MBIA's comments should not be construed as a commitment to insure any future bonds of the District, agency or authority of the District including the contemplated Water and Sewer Authority which is the focus of today's hearings.

Over the last several months we have discussed the proposed legislation with the Subcommittee staff. Today, we would like to address two global issues issues key to the successful spin off of the Water and Sewer Utility Administration into a separate Authority and address nine issues related to the proposed sale of revenue debt by the new Authority. The first global issue is that a new entity that intends to issue debt by selling revenue bonds in the future must be independent from any other governmental body. This is especially true in the case of the proposed Authority because of the below investment grade rating assigned to the District by the rating agencies.

The second global issue involves the collection of revenues and the payment of expenses. Control of the revenue stream by the issuing entity is critical to future bondholders. Only when the party that pledges its revenue to pay debt service actually controls the revenue stream can comfort be taken that the pledge can be enforced. In addition, control of the revenues by the Authority will further underscore the Authority's independence.

The nine issues related to a future sale of revenue bonds are aimed at maximizing the attractiveness of the securities to the capital markets. First, on a general note, the conveyance of rights to the revenue stream of water and sewer rates, fees and charges to the new Authority should be in force and effect at least as long as any of the Authority's bonds are outstanding. Typically this is not a major concern when an authority holds title to the plant. However, our understanding is that with respect to the proposed Authority, title will remain with the District and the District retains the right to terminate the Authority.

Second, while we recognize that the creation of the new Authority involves several "temporary" and "transition" periods, one should not expect the bond market to embrace a new bond issue until the Authority becomes a free-standing independent entity with its own accounts receivable and accounts payable system in place and its charter permanently approved. Until that time, the Authority will be not be viewed any differently from the existing Water and Sewer Utility Administration.

Third, the proposed legislation requires a study be done to examine the Authority's operations 12 months after the first year of operations. Typically for new authorities, and for systems that are operating under EPA consent decrees, an outside engineering firm will conduct a baseline feasibility study in the early stages of operation or upon indication that the physical plant is not meeting the needs of the customers or the requirements of the EPA. Such a study will include an assessment of the physical plant, determine the immediate and future capital needs and be incorporated into a rate study that will then recommend the water and sewer rates required to provide the necessary resources to complete the capital program, and to cover operating and debt service needs. It is often the case that annual follow up assessments are done by the engineer to measure progress along the original baseline and modify its recommendations as needed.

Fourth, water and sewer rates are typically set by the Board of an authority with the engineer's input. The legislation is not clear as to whether the full Board sets rates or whether the District members of the Board set the rates. From a bondholder's perspective, it is important that the rates reflect the needs of the system as a whole, covering expected capital needs, operation and maintenance expenses and debt service expenses by a factor in excess of one. The level of additional debt service coverage, known as a "rate covenant," varies from case to case and is usually negotiated at the time of the first bond sale.

Fifth, to protect against dilution of the revenue stream once the initial series of bonds are issued, there is usually a coverage test which must be met prior to the issuance of additional parity bonds. This is known as an "additional bonds test." This test typically requires that historical revenues cover operations and maintenance and future debt service obligations by a comfort factor similar to the rate covenant. The language in the legislation requires only that "sufficient" revenues be raised. The distinction between one times coverage to pay debt service and coverage that provides an extra level of comfort in the event of an unexpected shortfall in collections or increase in expenses is important.

Sixth, it is common practice for an independent, outside accounting firm and/or engineering firm to certify that projected operating and debt service expenses will be covered by the rates in compliance with the bond documents. The legislation does not require this.

Seventh, under the proposed legislation, transfers to the District are permitted to reimburse the City for services provided and to pay for that portion of debt service on General Obligation bonds sold to finance the Blue Plains facility. These are reasonable expenses and would not negatively impact the credit of the new Authority. It is not unusual to have a strong utility operation transfer surplus revenues, after payment of the all expenses, to a city's general fund. However, a stronger pledge to holders of the revenue bonds and one which will improve the Authority's chance of market acceptance, is what's called a "closed loop." In this case, surplus revenues are retained by the Authority and used to pay down bonds, fund capital projects or subsidizes future rates. They are prohibited from being transferred out of the Authority.

Eighth, related to the "flow of funds" referred to above, is the issue of what priority payment of the previously issued General Obligation bonds by the District on behalf of the Water and Sewer Utility Administration have compared to payment of the new Authority's revenue debt. Revenue bond holders will prefer a senior claim to the revenues.

Ninth, the presence of a debt service reserve fund to provide liquidity is customary for water and sewer revenue bonds. We recommend one be included in any future financing by the Authority.

Finally, while not related to the creditworthiness of future Authority bond sales, we feel that since a portion of authorized transfers to the District are to cover the cost of GO bonds, it seems appropriate that these revenues flow through the collection mechanism, or "lock box," currently used to funnel property taxes pledged to pay the bonds.

We would be happy to answer any questions you have.

Mrs. MORELLA [presiding]. Thank you, Mr. Gourd. That was an excellent specific legislation in the areas where you could be specific, and I very much appreciate your expertise on this.

I'm going to go back to the questioning of Mr. McCabe, and then I'll get to you.

Mr. GOURD. Fine.

Mrs. MORELLA. I just wondered, Mr. McCabe, are you satisfied that the managerial and financial difficulties that have plagued Blue Plains can be effectively dealt with by this independent authority with suburban voting representation?

Mr. MCCABE. I think that the authority does move us in that direction. It is something that, as I mentioned in my testimony last February, we at EPA feel will improve the situation. We call for the establishment of an authority. I think, in the combination with the lockbox that Congressman Hoyer talked about, which he and Congressman Walsh worked on, in the omnibus appropriations bill, that, combined with the authority, will move toward putting the facility on firm financial and operational grounds. And we support that agreement.

Mrs. MORELLA. And the——

Mr. MCCABE. Oh, absolutely. Yes. I think that the regional representation is important for this particular facility.

Mr. DAVIS [presiding]. Do you want to get into the eight votes versus seven votes?

Mr. MCCABE. No.

Mr. DAVIS. OK. You just shortened your stay here. Let me yield to Ms. Norton, then I have a few other questions for the record.

Ms. NORTON. Thank you very much, Mr. Chairman. This testimony has been very helpful. I just want to note, Mr. Gourd, that the notion about terminating the authority really should not be a problem. The District is here because it has to have authority to borrow. So, leaving aside the home rule concerns, that authority is with the Congress. In any case, as I indicated to the previous panel, the District could not arbitrarily terminate this authority, because, in doing so, they'd have to face the Congress, because all their bills have to come up here. I do appreciate the distinction you make between what may have to be in legislation and what may be included otherwise.

Mr. McCabe, let me just thank you for the way in which you have worked with the District to assure that serious environmental concerns did not spill over, unattended to. And the agreement that has been reached seems to me the way one would always want to handle such a matter whenever possible. Of course, if we want to go into litigation, we can go into 10 years or whatever it takes to settle these things. And this was urgent. It needed to have an agreement. It needed to be settled. I, of course, am therefore concerned that the agreement is not operative, because the State of Virginia has intervened. Now, I know that you all had no objection to their intervening, so you may have set yourself up for this. Perhaps they could have intervened as a matter of right; I don't know. But Virginia has intervened, claiming to want to deal with this situation, and, apparently, as intervenors, are keeping the agreement from going into effect, thus producing or helping or perhaps moving

us toward producing the very hazards that caused their intervention in the first place.

I'd like to ask you whether you have had any discussions with the State of Virginia, especially considering that an EPA spokesman has been quoted in the Washington Times as saying that the Virginia complaint has no merit. I would think it particularly has no merit if we've been able to arrive at an agreement among the parties. And would you kindly elaborate on why this matter is continuing to be outstanding and what is being done to bring it to closure?

Mr. MCCABE. Well, Congresswoman, you are familiar with the effort that we at EPA, at the Department of Justice, and in the District undertook to reach that agreement. You were briefed on that. I know that you tracked it closely. And it is a good agreement. It took a lot of time to put together. It addressed the emergency concerns that we saw at the Blue Plains facility. We believe that the District has taken that agreement seriously, and that we worked very hard to keep that from going to court. So it is of concern to us that now that we have a good solid agreement that the Virginia attorney general should step in and claim that more needs to be done. We feel that any citizen has the right to enter a suit like this. We are strongly supportive of citizen intervention. And, ironically, the State of Virginia is using the citizen suit portion of the Clean Water Act to intervene. But if they want to pursue their legal recourse on this, we feel that they should not oppose the entering of this agreement with the court, and, in fact, we understand that is what they plan to do. We would hope that they would allow the agreement to be entered. We think that many of the issues that they have identified in their case will be answered by the legislation that this committee is talking about today, and that the long-term prospects for the Blue Plains facility will be improved by this legislation. So I don't see a need for intervention of the sort that Virginia has proposed, even though we see Virginia's right to do so.

Ms. NORTON. Could the court overrule in Virginia and just simply go ahead and do it?

Mr. MCCABE. The court could, in fact, move forward and go ahead and enter the agreement.

Ms. NORTON. Is that under advisement?

Mr. MCCABE. We have recommended that that's what the court do. And, in fact, we could have had this all resolved a month or so ago, had it not been for the intervention and the comment period that's required, once an intervenor makes a motion of this sort.

Ms. NORTON. Well, I think a delay is unconscionable here.

Let me just say, Mr. Chairman, after Mr. McCabe testified the last time, I took it upon myself to call the corporation counsel and to say to the corporation counsel that, "There are times when the District continues in litigation, that where the—where, if all things were considered, the public interest isn't always served." I could understand it, because where any lawyer feels that she has a defense or has a case, we are trained to move forward. That's maybe one of the problems at the bar today. And I called the corporation counsel myself and asked that the corporation counsel make every attempt to settle this matter rather than try to litigate this matter. I had seen the District litigate matters that were, at least, as

strong as this or stronger, and he indicated that he would make every effort to do so, and he certainly has done so.

I would ask you, Mr. Chairman, whether you'd be willing to make a call to the attorney general of the State of Virginia and ask him, as I asked my corporation counsel the functional equivalent of your attorney general, to let my people to let my people; in other words, let this agreement go. I just think that would be helpful here. He might still retain his right, but why can't the agreement go into effect while he is pursuing any other right he may believe he has.

Mr. DAVIS. Well, I'll certainly talk to him. He's, of course, unlike your corporation counsel, independently elected. It gives him a little bit different charter than the corporation counsel, but I'd be happy to talk to him. He is not in town today, we did check that earlier, but I'd be happy to check that. We are trying to keep this running as smoothly and cooperatively as we can. At the same time, we want objections to be raised in a fair manner, but no unreasonable delays. Of course——

Ms. NORTON. I'm not asking him to give up his rights, but just let us go ahead with what we've gotten so far.

Thank you very much, Mr. Chairman.

Mr. DAVIS. Thank you.

Mr. Gourd, let me ask you a few questions. Would you object if I wanted to enter your correspondence with the subcommittee staff into the record?

Mr. GOURD. No, sir.

Mr. DAVIS. All right. Then I would ask consent the MBIA correspondence be entered in the record.

Your statement raises a number of interesting points, which I tend to agree with, but I have some concern that you may appear to be more critical than you intend. I'd like to run down your recommendations. First, the WSA must be independent because of the District's poor bond rating. Do you agree that the WSA is substantially independent and much more so after the June 5 amendments?

Mr. GOURD. Yes; we do. I think the reference about the ability of the District to dissolve the authority we found surprising, and your point is well taken, Congressman, about the need to go through Congress in order for anything like that to happen. But it sort of raises the antennas as we read about the authority's dissolution.

Mr. DAVIS. Well, we can try to clarify that. We'll work together on that to see if we can satisfy those concerns.

Second, since the WSA bonds would be revenue bonds, backed by the revenue stream of the ratepayers, is it independent enough to get a good rating, all other things being equal?

Mr. GOURD. Properly structured, yes; we believe so.

Mr. DAVIS. OK. Good. The second point is the control of the revenue. Do you agree that taking the WSA out of the general fund entirely and letting it collect its own revenues and put them into its own account, as required in the June 5 amendments, adequately deals with the issue? Isn't this more like an enterprise fund now?

Mr. GOURD. Yes, sir. We think that would take care of it. The concern that we had was primarily around the transition and the temporary periods.

Mr. DAVIS. We can try to clarify that too. If you'd work with us to meet those objections, I think that makes our intent easier.

Mr. GOURD. We'd be happy to.

Mr. DAVIS. On your nine issues on future bond sales, conveyance of rights, does the June 5 amendment, section 207, which states: "Assets made available to the Authority pursuant to the subsection shall remain under the control of the Authority for so long as the Authority revenue bonds are outstanding" take care of your point?

Mr. GOURD. I think it does; again we raised the issue in connection with the ability of the District to terminate the authority. And, frankly, we would expect that by the time this came to a bond issue, that bond counsel would look at this and address this as an issue.

Mr. DAVIS. Two, "The WSA must be operating on its own before it can expect to sell revenue bonds." I want to assure you that the WSA will not attempt to sell revenue bonds until long after it's fully operational. Mr. Rogers said he expects full independence within just a few months. We'll be working with the District CFO and others to make certain those things happen as fast as possible.

Three, "Engineering study to assess plant needs of the system and set out rates." The District has some recent engineering studies and EPA studies that could prove helpful. If engineering studies are called for for standard operating procedure, then I would fully expect the WSA to conduct such studies. A study called for in the District legislation is another matter entirely. My question is do you feel it's necessary for Congress to spell out the type and frequency of such studies in Federal law or is the WSA Board capable of doing them on its own?

Mr. GOURD. Again, it is probably not necessary for this to appear in the Federal law. Again, it was an attempt by us to let you know some of the issues that might be raised when bonds come to market.

Mr. DAVIS. OK. Fourth, "Rate setting and the bond covenant. The WSA Board is responsible for setting rates, both retail and wholesale. Under the June 5 amendments, the Authority shall set rates, levies, fees, and other charges which will result in the collection of amounts, which, together, with other Authority revenues available and applicable will be at least sufficient to pay its cost, the principal of and interest on and other requirements pertaining to its bonds." Is that acceptable?

Mr. GOURD. Well, the reason we raised this issue is that we were confused by section 216 in the proposed legislation, we're not regular readers of this type of language which says "The Authority shall, following notice and public hearing, establish and adjust retail water and sewer rates. The District members of the Board shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget." That's probably just an item for a clarification in there.

Mr. DAVIS. As far as the rate covenant, your testimony said that such an item was used in negotiating with the first bond issues,

that it's not an item that would be or should be included in legislation?

Mr. GOURD. That's correct. We don't believe it needs to appear here.

Mr. DAVIS. Fifth, you hit on the additional bonds test. I understand your point and I agree with it. Is it necessary that the Federal statutes say "comfort factor" or is it so much in the WSA's self-interest to maintain such a level of revenue that will automatically do so?

Mr. GOURD. We don't believe it's necessary to be included specifically in the legislation. It will probably be in the bond documents, and it will very much be in their interest to comply with the bond documents.

Mr. DAVIS. Sixth, the accounting firm or engineering firm certification. The June 5 amendments require the authority's certification should be supported by expert study and analysis. Is that not specific enough and can't the board be relied on to take this obviously important step?

Mr. GOURD. Again, for legislation purposes, I think this is fine. It might be tightened up at the time of the bond sale.

Mr. DAVIS. Seventh, the closed loop. The June 5 amendments in section 207 state "All revenues, proceeds, and moneys from whatever source derived, which are collected or received by the Authority should be credited to the fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the cash management, or any other funds or accounts of the District of Columbia." What could be stronger or clearer than that?

Mr. GOURD. Our issues and comments that we raised with regard to that really run to the concept of transfers to the District for services, and I think for purposes, again, of the legislation, it's probably fine, but at time of sale of bonds, the investor would want to, you know, see that tightened up, so that there were some parameters, some quantification of the size of the transfers

Mr. DAVIS. This may all be a guess, but it seems all of this might be spelled out better in report language, as we write this, so we don't straightjacket the authority, but, at the same time, make very clear what they're going to need to do and there's no misunderstanding.

Mr. GOURD. It's not our intention to straightjacket the authority.

Mr. DAVIS. Eighth, the priority of payment. "The revenue bonds would get first claim, while the Authority is charged with setting rates high enough to guarantee payment of the debt service on the GO bonds." If the current language isn't sufficient to do that, will you work with us to insure that we can make it——

Mr. GOURD. We'd be happy to work with you. We think, from the authority's perspective, what you've just spelled out makes sense.

Mr. DAVIS. OK. And, ninth, the reserve funds. Is it necessary to set this in the Federal legislation or is it standard operating procedure? I assume that keeping that your reserve fund would be the basic part of the authority budget under generally accepted accounting principles?

Mr. GOURD. It is typically standard operating procedure in bonding water and sewer revenue bonds.

Mr. DAVIS. OK. And we've talked about the lockbox; I think you have, and are you comfortable with that?

Mr. GOURD. I am a little confused as to the treatment of the GO bonds going forward. Whether they're going to be treated as revenue bonds or treated as GO bonds, obviously you can't take away the general obligation pledge and they're still secured, as they were initially.

Mr. DAVIS. I think maybe the District legislation might have been a little confusing, and we'll try to fix that and work with you—and with the city, of course, to try to—

Mr. McCabe, just a couple questions for you. You're satisfied with the separation of the revenues from the general fund?

Mr. MCCABE. Yes.

Mr. DAVIS. Are you satisfied with the repayment schedule and the certainty, as promised, by the control board?

Mr. MCCABE. I think that this is something that has been addressed in the 5-year plan. It is something that, as Congresswoman Norton mentioned, is going to have to go through the appropriations process. We did discuss it as part of the agreement, and feel that the District recognizes its obligation to repay that amount.

Mr. DAVIS. Well, thank you. Those are all the questions I have. I just want to thank you very much. This has been a very informative hearing from my perspective. Staff will be in touch with the interested parties about amending the draft, the legislation, report language, and the like, and I would ask unanimous consent that the written testimony of John Hill, the executive director of the control board, be included for the record as well. I believe that this important and regional issue is a lot closer to being solved, both in the short-term and the long-term basis today, then it ever has before. The subcommittee will mark up the legislation as revised on Tuesday, June 18, at 4 p.m., in room 2154, assuming that we can close what we need to close on this.

Ms. Norton, any parting comments?

Ms. NORTON. No. Thank you.

Mr. DAVIS. Thank you for being here. Thank you all very much. The meeting will be adjourned.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

[The prepared statement of Hon. Barbara-Rose Collins and additional information submitted for the hearing record follows:]

1

MR. CHAIRMAN, THANK YOU FOR CONVENING THIS HEARING ON THE DISTRICT OF COLUMBIA'S BLUE PLAINS WASTEWATER TREATMENT PLANT. TODAY'S HEARING WILL FOCUS ON DEVELOPMENTS WHICH HAVE OCCURRED SINCE OUR LAST OVERSIGHT HEARING ON THIS MATTER WHICH WAS HELD ON FEBRUARY 23, 1996. WE WILL ALSO DISCUSS WHETHER THIS SUBCOMMITTEE SHOULD PROPOSE FEDERAL LEGISLATION PERMITTING A NEW WATER AND SEWER AUTHORITY TO BORROW FUNDS TO FINANCE MUCH NEEDED IMPROVEMENTS TO THE BLUE PLAINS FACILITY.

WITHIN THE LAST TWO MONTHS, THE DISTRICT HAS REACHED AN AGREEMENT WITH THE FEDERAL GOVERNMENT TO ENGAGE IN A TWO-YEAR, 20 MILLION DOLLAR CAPITAL IMPROVEMENT PROGRAM TO HALT THE FURTHER DETERIORATION OF THE BLUE PLAINS FACILITY AND TO MAKE SIGNIFICANT IMPROVEMENTS IN THE MAINTENANCE AND TREATMENT PROCEDURES AT THE PLANT.

THE AGREEMENT ALSO REQUIRES THE DISTRICT TO SUBMIT MONTHLY REPORTS TO EPA ON THE STATUS OF CONSTRUCTION PROJECTS, AS WELL AS THE STATUS OF PAYMENTS TO CHEMICAL SUPPLIERS AND MAINTENANCE CONTRACTORS. THESE EFFORTS DIRECTLY ADDRESS CONCERNS THAT FAILURE TO CORRECT BLUE PLAINS WOULD RESULT IN A SIGNIFICANT RISK TO PUBLIC HEALTH AND THE ENVIRONMENT.

SINCE FEBRUARY, MEASURES HAVE BEEN IMPLEMENTED TO ADDRESS EPA'S FINDINGS THAT THE DISTRICT HAS IMPROPERLY DIVERTED IN EXCESS OF $80 MILLION FROM THE ENTERPRISE FUND FOR USE IN OTHER GOVERNMENTAL PROGRAMS. INCLUDED IN DC'S FY96 APPROPRIATIONS BILLS IS A PROVISION WHICH REQUIRES THE ESTABLISHMENT OF TWO SEPARATE ACCOUNTS WITHIN THE ENTERPRISE FUND -- ONE FOR WASTEWATER TREATMENT USER CHARGES, AND THE OTHER FOR EPA GRANTS AND OTHER CONSTRUCTION APPROPRIATIONS AND FUNDS. THESE STEPS WERE DESIGNED TO DIRECTLY ENSURE THAT FUTURE FUNDS WILL BE AVAILABLE TO ENABLE THE SAFE AND EFFECTIVE OPERATION OF THE BLUE PLAINS FACILITY.

D.C. ACT 11-201, KNOWN AS THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY ACT OF 1995, WAS SIGNED BY THE MAYOR IN JANUARY. IT ESTABLISHED THE DC WATER AND SEWER AUTHORITY AS A NEW INDEPENDENT ENTITY WITHIN THE DISTRICT GOVERNMENT. THIS LEGISLATION WAS IMPLEMENTED TO OPERATE, MAINTAIN, AND IMPROVE THE DISTRICT'S WATER DISTRIBUTION AND SEWAGE TREATMENT SYSTEMS. THE NEW AUTHORITY IS INDEPENDENT FROM THE RESTRAINTS OF THE

DISTRICT'S PERSONNEL AND PROCUREMENT RULES, AND HAS THE POWER TO RAISE MONEY, COLLECT FEES FOR ITS SERVICES, AND BORROW MONEY.

D.C. ACT 11-201 FURTHER ESTABLISHED THAT THE WATER AND SEWAGE AUTHORITY BE GOVERNED BY A 10 MEMBER BOARD OF DIRECTORS INCLUDING REPRESENTATION FROM THE FOUR NEIGHBORING COUNTIES SERVICED BY BLUE PLAINS. THE AUTHORITY ALSO HAS POWERS TO ADDRESS OUTSTANDING ISSUES SUCH AS: ASSET TRANSFERS, PRIVATIZATION, AND THE ULTIMATE CREATION OF A TRUE REGIONAL AUTHORITY.

THIS PROPOSAL WAS NOT EMBRACED BY THE SUBURBAN JURISDICTIONS. A LETTER EXPRESSING A PREFERENCE FOR GREATER REPRESENTATION ON THE BOARD, OR, FOR A REGIONAL AUTHORITY THAT IS NOT A PART OF THE DISTRICT GOVERNMENT WAS FORWARDED TO CHAIRMAN DAVIS OF THIS SUBCOMMITTEE. IN A LETTER TO CHAIRMAN DAVIS, MAYOR BARRY CONSENTED TO SOME OF THE REQUESTS FROM JURISDICTIONS. HOWEVER, THE MAYOR WOULD NOT AGREE TO THE REQUEST TO TRANSFER ANY ASSETS OF BLUE PLAINS TO THE NEW WATER AND SEWER AUTHORITY WITHOUT COMPENSATION.

SUBSEQUENT TO CORRESPONDENCE AND NEGOTIATIONS BETWEEN THE DISTRICT, SUBURBAN JURISDICTIONS, AND SUBCOMMITTEE STAFF, A NEW PACKAGE OF AMENDMENTS TO THE ACT WAS DEVELOPED WHICH ADDRESSED SOME OF THE CONCERNS OF THE SUBURBAN JURISDICTIONS. THESE AMENDMENTS ALSO CONTAINED PROVISIONS DESIGNED TO ENSURE THE FINANCIAL STABILITY OF THE NEW AUTHORITY. D.C. BILL 11-729 WAS APPROVED ON AN EMERGENCY BASIS BY THE COUNCIL.

WITH THE APPOINTMENT OF BOARD MEMBERS TO BE COMPLETED BY OCTOBER 1, 1996, THE QUESTION REMAINS: WHERE WILL THE DISTRICT GET THE 20 MILLION DOLLARS NEEDED TO MAKE SYSTEM IMPROVEMENTS TO COMPLY WITH THE SETTLEMENT AGREEMENT MADE WITH EPA AND THE JUSTICE DEPARTMENT? THERE ARE THREE OPTIONS: RAISE RATES, ASK CONGRESS FOR ADDITIONAL FUNDS, OR ISSUE BONDS AND BORROW THE NEEDED FUNDS. IN ORDER FOR THE NEW AUTHORITY TO EXERCISE THE LAST OPTION, CONGRESS MUST AMEND THE HOME RULE CHARTER.

IT IS MY UNDERSTANDING THAT AT THE REQUEST OF MAYOR BARRY, CHAIRMAN DAVIS IS DRAFTING LEGISLATION WHICH

WOULD AMEND SECTION 490 OF THE CHARTER, AND PERMIT BORROWING AND ISSUANCE OF BONDS FOR THE PURPOSE OF FINANCING THESE MUCH NEEDED IMPROVEMENTS. I WOULD WELCOME SUCH LEGISLATION AND STRONGLY SUPPORT THE EFFORTS OF THE RANKING MINORITY MEMBER, CONGRESSWOMAN NORTON, IN CRAFTING AN ACCEPTABLE SOLUTION TO THIS PROBLEM.

TO THAT END, I LOOK FORWARD TO HEARING FROM EACH OF OUR WITNESSES AND GAINING INSIGHT ON WAYS TO ENSURE THE COMPLETE AND SAFE OPERATION OF THE BLUE PLAINS FACILITY.

THANK YOU, MR. CHAIRMAN.

ELEANOR HOLMES NORTON
DISTRICT OF COLUMBIA

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES
PUBLIC BUILDINGS AND
ECONOMIC DEVELOPMENT
WATER RESOURCES AND
ENVIRONMENT

COMMITTEE ON
GOVERNMENT REFORM AND
OVERSIGHT

SUBCOMMITTEE
RANKING MINORITY MEMBER,
DISTRICT OF COLUMBIA

Congress of the United States
House of Representatives
Washington, D.C. 20515

OPENING STATEMENT OF CONGRESSWOMAN ELEANOR HOLMES NORTON AT THE DC SUBCOMMITTEE HEARING ON THE BLUE PLAINS WATER TREATMENT PLANT

June 12, 1996

I want to thank Chairman Tom Davis for convening this hearing on the progress of the District and regional jurisdictions in establishing a new and independent D.C. Water and Sewer Authority. This hearing will also examine the necessity to amend the Charter to allow borrowing and the issuance of bonds by the independent Authority. I also want to thank the Chairman for his fairness in encouraging the jurisdictions to reach agreement among themselves.

Unfortunately, the District's insolvency is particularly reflected in capital facilities, such as Blue Plains. The Environmental Protection Agency's concern, now being addressed, about the effect of the deterioration of the facility on the Potomac is well placed. We cannot allow the river to become an environmental outcast endangering the entire region. However, the difficulty that the District now has in making and meeting the commitment enshrined into this agreement with no help from the Congress and a frightening taxpayer flight should not be underestimated.

The Mayor, City Council, Control Board and suburban jurisdictions have worked well together, to craft the new Authority. They deserve our special praise and thanks and that of the residents who will be affected, especially considering the number of participating entities involved. They have developed an agreement that allows for full participation by the customer jurisdictions without violating the Home Rule integrity of the District. Where various jurisdictions have desired change, they have negotiated and the District has been forthcoming. Now the Congress must move to amend the Charter to give the Authority the lifeblood represented by the power to borrow and issue bonds.

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Mr. Chairman and Members of the Subcommittee:

My name is John W. Hill Jr., and I am the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority. Thank you for inviting me to testify on the creation of the new water and sewer authority.

This morning, as requested by the Subcommittee, I will discuss the Authority's position regarding the creation of the water and sewer authority, the D.C. Council's emergency legislation on the water and sewer authority, and the draft congressional legislation which you plan to introduce to give the new authority borrowing capacity.

The issue before us today--the creation of the new water and sewer authority and assuring that it has the proper financial tools to accomplish its mission--is an extremely critical one for the Authority. The provision of effective water distribution services and sewage collection, treatment and disposal to the District and portions of the Metropolitan Area is essential to ensure the health, safety and well-being of the citizens of the District.

Background

The Water and Sewer Utility Administration (WASUA) of the District of Columbia Department of Public Works currently is responsible for providing wastewater treatment services to the District and jurisdictions in the surrounding area including Fairfax County, Virginia; Montgomery County, Maryland; and Prince George's County, Maryland. WASUA consists of 1,242 employees, 2,400 miles of sewers, 1,300 miles of water mains, 25,000 catch basins, 27 pumping stations and has a capacity to treat 309 million gallons per day of wastewater. Blue Plains, the sewage treatment arm of WASUA, is valued at $1.4 billion, and occupies 154 acres of waterfront property in southwest Washington. Blue Plains is scheduled to be expanded to treat 370 million gallons per day by the year 2010.

Mr. Chairman, as you are already aware, the financial crisis in the District has negatively affected the operations of the Blue Plains Wastewater Facility. The crisis prompted the use of over $81 million in WASUA reserve funds in FY 1994 to fund other District cash needs. In addition, various capital and chemical supply needs went unmet and/or contractors supplying critical supplies and services to Blue Plains were not paid. This situation brought Blue Plains dangerously close to violating its EPA permit to operate.

It has become increasingly apparent to the surrounding suburban users of Blue Plains and to District officials that a more efficient way of operating the facility must be found. The creation of the new water and sewer authority is the appropriate step in moving Blue Plains' operations toward better management, and providing improved service and maintenance for health and safety of the Washington Metropolitan area.

Independent Water and Sewer Authority

D.C. Act 11-201, "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996," which passed the D.C. Council on January 4, 1996, establishes an independent water and sewer authority which will effectively separate the finances and management of WASUA, or Blue Plains, from the District government and insulate the plant's operations from the current financial difficulties of the District. The authority would be governed by a 10 member board of directors, six of whom must be District residents. The remaining four members would come from the suburban jurisdictions of Fairfax county, Virginia; Montgomery County, Maryland, Prince George's County, Maryland, and the Washington Suburban Sanitary Commission. The Mayor would appoint the chairperson from among the six District Board members.

Under the legislation, the new authority would have the power to: (1) borrow money; (2) issue revenue bonds; (3) establish, levy, and collect revenues and fees; and (4) raise and expend its own funds without congressional approval. The authority would also have an independent budgetary process; determine water rates independent of the Mayor and D.C. Council; and its funds would be separate from the District's general fund. The Mayor, as agent for the new authority, would expeditiously deposit all dedicated revenues into the authority's fund.

The legislation also calls for the new authority to assess the feasibility of privatizing Blue Plains within six months after enactment. The new authority's recommendations would be submitted to the Mayor and Council for approval. The Authority would also approve the privatization recommendations under its powers to review legislation and contracts. The new authority also must conduct a study after the first full year of operation to determine the feasibility of establishing the authority as a regional authority, similar to Metro. This study would also make recommendations concerning the ongoing relationship between the user jurisdictions.

The Authority approved the legislation creating the new water and sewer authority on February 15, 1996, after an extensive review including a public hearing at which the District and Council of Governments (COG) officials presented testimony in support of the legislation. The Authority did so because the legislation offered the potential for significant improvement in the efficient, effective, and equitable operation of Blue Plains and the assurance of quality wastewater treatment and quality water delivery to the citizens of the District and the region.

However, the Authority remained concerned with two aspects of the legislation--(1) the development of a District plan for the repayment of $81 million borrowed from WASUA reserve funds; and (2) the complete separation of water and sewer revenues from the general fund of the District--and conditioned its approval on their resolution. The first issue has been resolved with the inclusion in the FY 1997 financial plan and budget of a plan to repay the $81 million over the next five years beginning in FY 1997. The emergency legislation, "District of Columbia Water and Sewer Authority Emergency

Amendment Act of 1996," passed by the Council on June 4, 1996, addresses the second concern.

The emergency legislation makes it expressly clear that the funds received by the new authority are not to be commingled with the funds and accounts of the District government at any time. It also provides that the District Treasurer will collect retail water and sewer payments for the new authority only until the new authority has implemented a collection system of its own. Similar provisions are provided for disbursements for the new authority. These provisions will make potential investors comfortable that funds will be totally segregated for the repayment of their water and sewer bonds.

The emergency legislation also provides that the new authority will have sufficient revenues to pay its costs and principal and interest on any outstanding bonds and on any proposed bonds, and that assets made available to the new authority remain under the authority's control for as long as authority revenue bonds remain outstanding. These provisions are also attractive from the bondholders' standpoint. It is important that the entity which issues the debt, i.e., the new authority, have sufficient revenues available to repay bond obligations, and that it control not only its revenues, but also the underlying assets which support the generation of those revenues. Controlling those assets is essential to being able to effectively generate revenues and manage operations in a manner that will permit the timely repayment of bondholders.

The emergency legislation provides the new authority with the ability to defease its bonds. This means that sufficient funds to pay all principal and interest on the outstanding bonds will be put in escrow (usually invested in U.S. securities). The escrow will serve as a guarantee of repayment for bondholders. For the new authority, this means that it would issue new bonds to fully fund the escrow account.

The emergency legislation also addresses some of the Authority's other concerns by increasing the membership of the new authority's board by one and eliminating the position to be held by a representative of the Washington Suburban Sanitation Commission; and requiring eight votes of the board to hire or fire the general manager.

In the Authority's view, the original legislation and the emergency legislation passed last week, represent an appropriate step in moving the Blue Plains operation toward better management and improved service. I would also note that the legislation requires that the new authority study the feasibility of privatizing the Blue Plains facility--a move that should it prove feasible--the Authority supports.

Congressional Legislation

Now, Mr. Chairman, I would like to give the Authority's views on the legislation you are introducing to allow the new authority to borrow what it needs to carry out its mission. As we understand the bill, it will allow the new authority to issue bonds, notes, and other

obligations to borrow money to finance or assist in the financing of its undertakings. These bonds would not be considered obligations of the District or subject to its 14 percent debt limit. However, the payments the new authority makes to the District related to certain general obligation bonds would be included in the debt limit. The bill would also require that funds transferred to the District Treasurer to make debt service payments be deposited into a segregated account in the general fund. The new authority would also be required to submit an annual budget to the District for inclusion in the District's annual budget and financial plan, though neither the Mayor or the Council would be able to make any reductions to its budget. Eight of the new authority's 11 board members would be required to approve any budget item related to joint-use facilities.

Your proposed bill is generally compatible with those passed by the D.C. Council and would provide the needed changes to the District's charter to allow the new authority to finance improvements to its wastewater treatment facilities. However, we recommend that revisions to several provisions be made for clarity and to optimize both the new authority's and the District's borrowing capacity.

Refinancing Projects. The proposed legislation may have inadvertently failed to give the new authority the ability to refinance projects if it should become more economic to do so. We would like the opportunity to work with the Subcommittee staff to clarify this issue.

Section 2. Permitting Issuance of Revenue Bonds for Wastewater Treatment Activities. This section would allow the new authority to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing of undertakings in the area of utilities facilities, pollution control facilities, water distribution facilities, and wastewater treatment and transmission facilities. This language is different from the generally accepted industry language, could cause unintended confusion and ambiguity, and may be too limiting. For example, under the terms in the draft legislation undertakings such as obtaining and treating water, storage or wastewater, or handling of storm drainage, all functions of the new authority, would be excluded as valid purposes for which the new authority could borrow money. We recommend that the draft be revised to use standard industry-accepted language.

Section 3. Treatment of Debt Servicing Payments by Authority on Certain General Obligation Bonds. This section would include in the District's 14 percent debt limit the payments that the new authority makes to the District on certain of the District's general obligation bonds related to water and sewer capital projects. At the same time, a provision in section 2 would exclude the revenues the new authority generates to make these payments from the calculation of the 14 percent debt limit. While we understand that the intent was to exclude both the revenues and debt service from the calculation, the draft as written does not successfully accomplish this intent. As written, the combination of these two provisions would significantly diminish the District's debt capacity. We would like the opportunity to work with the Subcommittee staff to clarify the language so

that the treatment of the debt service payments is equitable to both the new authority and the District.

Section 5. Treatment of Budget of Water and Sewer Authority. This section requires that the new authority submit an annual budget to the District for inclusion in the District's financial plan and budget. The emergency legislation recently passed by the Council requires the new authority to submit a financial plan which covers five fiscal years. If your requirement could be changed to mirror that of the Council's, the new authority's budgeting process would be compatible with the District's current process.

The Authority supports the legislation with the above revisions. The Authority recognizes that the draft it reviewed was a discussion draft and looks forward to working with the Subcommittee staff to clarify these outstanding issues in the near future.

That concludes my testimony. Thank you for the opportunity to present the Authority's views of this important subject.

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