
**REFLECTIONS ON WATER, EPISODE 5, TRACY MEHAN
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Drinking Water on Tap: Money, Morality, and More with Tracy Mehan from the American Water Works Association

[Dave Ross]

Welcome to Reflections on Water. I'm Dave Ross.

[Anna Wildeman]

And I'm Anna Wildeman. In this episode, we sit down with Tracy Mehan from the American Water Work Association. Dave, we had such a great conversation with Tracy, and we really covered a lot of ground. I mean, we, we talked about the Lead and Copper Rule. We talked about PFAS. We talked about the emerging contaminate issue, and then a lot of talk about money. You know, infrastructure money and the affordability issue. And even though we covered so much ground, I feel like there's still so much more that we could have talked about with Tracy. You know, including some of these big picture policy questions around the Safe Drinking Water Act, Framework and the other regulatory tools that the Federal Government states have available to them.

[Dave Ross]

Yeah, Anna, I think people are really gonna enjoy the conversation. Tracy provides some amazing perspective on the big ticket cutting edge issues in the Safe Drinking Water Act today. But I agree with you. I think we need to have Tracy back on to continue the conversation about "is the Safe Drinking Water Act the right tool to continue to grapple with some of these big ticket issues." I think it's an amazing tool. The question is, as we go forward, can we continue to enhance it and make it even more adaptable to the emerging issues of the day. So, more to come on that. But, in the meantime, Anna, I think we should roll the tape because I think the folks are really going to enjoy this conversation.

[Anna Wildeman]

I want to welcome to the podcast, Tracy Mehan. Tracy is a pillar of our water community. I mean, quite literally, Tracy has had a long history in water policy at the highest level including as a former Assistant Administrator of the Office of Water at EPA. Tracy currently serves as the Executive Director of Government Affairs at the American Waterworks Association. We call it AWWA. Welcome to the show, Tracy.

[Tracy Mehan]

Thank you very much.

[Anna Wildeman]

Great to see you. Can you tell us a little bit about AWWA and your role there?

[Tracy Mehan]

Sure. The American Waterworks Association is, we like to think, maybe the largest and hopefully, effective water association in the world. It was started in 1881 In St. Louis at Washington University. It's a 501(c)3. So, we do advocacy, which is in my shop and here in

Washington. You know, we do standards. We're a certified standard setting body. Both for waste water, drinking water, education, programming, ongoing continue education and training, policy development, etc., etc. And, we have 50,000 individual members, and 4,400 utility members, drinking water utilities, 60% of whom are combined systems. That is, they water and waste water. And, about 2,000 or so are called Service Providers, manufacturers, A&E firms, etc. And, there's eight of us here in Washington doing regulatory affairs and legislative affairs, and I run that office. It's called our Government Affairs Office here in Washington, DC.

[Anna Wildeman]

Well, that's great public pretty significant footprint within the industry.

[Dave Ross]

Hey, Tracy. This is, it's great to see you. Thanks so much for joining the Reflections on Water podcast. You know, I wanted to touch base and start off the podcast talking a little bit about using that AWWA Washington, DC presence setup, that you just talked about. It talked about money. We had, with the Infrastructure Bill passing last year, was a very significant infusion of cash into the water sector, water and waste water sector, you know, much needed, in my opinion. Why don't you just give us a little background on what the Infrastructure Bill means for the water sector, and maybe your AWWA's role in helping to secure that money?

[Tracy Mehan]

Well, thanks, Dave. As you can imagine, AWWA, like the other water associations, you know, we're all following this very careful, and very much behind a strong advocacy position, especially, on some of the newer challenges, like replacement of lead service lines emerging contaminants, such as PFAS. But, also, just boosting the baseline programs. That would be the state revolving loan funds and WIFIA [Water Infrastructure Finance and Innovation Act]. I would have to say, it was really, I mean it was an historic infusion of resources into the sector, and when doesn't want to be ungrateful, but it's good step. I don't think it's. In fact, I'm working on a cautionary column right now, where despite, you know these billions of dollars are coming into the sector, the challenges are great. We put a trillion dollar number of jut the drinking water needs, or next several decades, and the waste water guys would come up with the same figure for them, and their storm water, water supply. So, great pairs are still going to have a responsibility, and, of course, we want to avoid a moral hazard of looking for the federal money, therefore, release, you know, the duty of local governments and municipalities, and utilities to keep their rates in a robust way. Dealing with affordability, which is something I'm sure we'll talk about. But, no, this is a historic infusion of resources and cash. It will take a little while for the python to digest this huge bit of food that's coming in since 85% of the dollars are going to move through the state revolving loan funds; both the Drinking Water and The Clean Water Fund. And, there's part of the Bill requires a state maximum that doesn't staffing issues. They do get resources allocated to them under some of the formulas. So, you know, we're trying to be cooperative educator members, make sure that they all make their next best friend the State Revolving Fund folks in their jurisdiction. And, we've always been supportive. Increased funding for WIFIA. Yeah, that was one of our brainchild, you know, we're glad to see that getting support. Not just in the Infrastructure Investment and Job's Act, but in the latest Appropriation's Bill. So, it's very good, and it's all just part of the chipping away at what is a huge challenge that is our infrastructure investment gap in the water waste water sector.

[Dave Ross]

I love the fact that you mentioned, you know, the in your python reference, really how the money flows into the system, and then out, actually to the community level. A lot of that, and I think, I think the public is probably lost or a bit in the dark as to how this happens, right? You know, Congress appropriates money to the Federal Government, the Federal Government then rolls it out to the states. Do you see implementation challenges, particularly, at the state level? How long we're talking before real money starts flowing out into the communities?

[Tracy Mehan]

Well, I think we'll see it next year. But, it is a challenge, and as I say, I think people are going to have to be patient and not have expectations that are unrealistic. You know, I was at the conference with the state administrators of the SRS, and I found a couple of states that said, "No. This is just like a plus up. We just keep doing what we're going to do." They didn't seem to be overly phased by it. Now, these happen to be states that didn't have a lot of PFAS issues, or lead service line issues. But, you know, it's a big country. So, you're going to see different situations, different circumstances in each state. There are challenges and we tell our members, "You've got to get in there, talk to this SRS folks, get on those intended use plans, and get in the pew, and get to know the process." A majority of you utilities haven't accessed SRS before. So, that's one of our major educational efforts within the Association itself. There are some hiccups there. The standard formula for allocating dollars to the state through the SRS Program is to a needs survey the EPA does periodically. The needs survey that's driving the initial trench of money is the old one that does not account for lead service lines. And, that's been in the field, I hear it's back from the field, but it's not gonna get in to till next year, as I understand it. I may be off on the timing. So, there's going to be dollars probably misallocated in terms of lead service line does, which will then have to kind of laugh then revert back and then go back out. But, in the main, there's still going to be a lot of money moving, and people need to get proactive to make sure they can access it. Independent of the new money, I think now that they're letting copper rule, which I know you were intermittently involved with is final and in effect. I think you're going to see some bigger jurisdictions that have like ten's of thousands, or even hundreds of thousands of service lines looking at the WIFIA program, too. Not just SRS, but, and that's speculation on my part.

[Dave Ross]

I think it sounds informed speculation. I think when we start seeing the price tags, particularly, knowing the success of the WIFIA Program, it's nice to see the drinking water sector starting to pick up into the WIFIA space. Obviously, early on I think the waste water folks were jumping in on the WIFIA bandwagon early. Before we, you know, we talked about affordability, you mentioned PFAS. We talked about lead and copper rule. We want dive deeper in this podcast in all those topics in a moment. But, I think it might get to the appetite question back down to your python reference, the infusion of cash is historic. It's nice to see the Federal Government putting more resources in this space. Back in the day of 1970's, 1980's, the Federal Government was a huge funder of water waste water infrastructure and it's nice to see infusion now. Do you think Congress will continue to feed the needs of the water sector going forward? Or, do you think is a one-time hit and then Congress will move on?

[Tracy Mehan]

The key variable here is politics and I say another variable is just the state of the Federal fiscal situation. The debt is historic. I think one has to be cautious. I think there is enough support for SRF and WIFIA that the ongoing appropriations will continue. There might be, and this is just rank speculation on my part, but there might be just sort of enough sensitivity that awareness of the lead challenge that we might see a plus up on the fifteen billion, given the fact that it's a least triple that the need, and it is a clear federal mandate that's driving the expenditures. We thought we were managing it pretty well with the corrosion control, and other things, which we don't want to pick at that scab. But, we do have a new federal mandate and it's gonna drive lead service line replacement. So, I think one's gotta be cautious in predicting like a continue sort of an ongoing continuous shower of federal dollars in this space. But, it's amazing that we got this money right now. But, there in a spending mood and we'll see how that continues and what the trade-offs are in the inevitable political process.

[Anna Wildeman]

Tracy, let's switch gears a little bit and talk about affordability. EPA released an Affordability Guidance document, and AWWA has some opinions about it. Can you talk to us about the organization's views and kind of where you're coming from with it?

[Tracy Mehan]

We are referring to the recent proposed, a revision, to the proposed guidance on financial capability which is the sort of factored into negotiation of consent decrees for combined sewer overflows. The reason why we worry about this at AWWA, along with our sister association's like NAWQA [National Water-Quality Assessment] and WEF, and others, is that, obviously, it's the same rate fair. If you're an area, well, you're all from Wisconsin, the example I always like to use, Milwaukee spent, Milwaukee MSD [Metropolitan Sewerage District] spent four billion dollars on tanks and tunnels for CSO's. I mean, well spent, I'm not arguing. But, then again, you got a drink water utility that doesn't have money to replace lead service. It's the same rate pair is the point I'm making. And, so, Congress, as you know had mandated a study by NAPA, the National Association of Polling Administrators, as that you gotta change this. You gotta get away from medium household income, and look at the lowest quintile. You gotta treat this as one rate fair between the waste water to water and the storm water sectors, and other things, you know. And, you all, when you were in there, came up with a fairly decent proposal. We had hired a number of well-known experts in this field that is three associations I mentioned and we thought we made a good-faith effort. We tried to treat it honestly like a graduate seminar to discussing the ins and outs and the policy issues, and that didn't make it to the Federal Register and now a new proposal is out that really kind of, I think is a retrograde movement on the part of the agency. They put a cap on Consent Decrees for 25 years when we know time is money, and that there's already on the books 30 year, 35 maybe even a 40 year Consent Decree. They've kind of gone back to MHI and deemphasized, at least in our estimation, the focus on the lowest quintile, the poorest of the poor. It's kind of a mess. And, I'm gonna generalize this. I think we also have a real good philosophic question here relating to environmental justice, generally, is to what extent affordability is an element of environmental justice? Another way to phrase it, do we treat economic justice just independently from environmental justice? Is there no interaction between the two philosophies or schools of thought? And we're kind of on the side that, hey, affordability is real and while maybe our colleagues don't spend a lot of time at rate hearings, things like that, it has real world effects and we're going to have a hard time, as I mentioned earlier and this is an important point, rates are still going to be important, customers are still

gonna make most of the cost in the decades ahead and this affordability thing is gong to be a real hurdle to maintaining robust rates, not that we can't argue about design and restructuring rates, but rates are gonna go up and this affordability issue is gonna get worse and worse and so we have to, I think address it where we can and the financial capability guidance is once place we could have.

[Dave Ross]

Yeah, I'm glad you mentioned the tension between affordability and environmental justice. In my experience at the agency, you know the regulators on the environmental side, are a bit disconnected from the rate setting regulatory structure and I think, quite frankly, some better education, some cross training in that space will probably be valuate for EPA. As an organization, as AWWA, like how do you get the current administration to, which is clearly focused on environmental justice, right, to try to understand that affordability is an environmental justice issued. Like what is your approach?

[Tracy Mehan]

Well, you know, you try to speak the truth and you know and do it in an as informed and articulate as you can. Given the history of where we are, I won't say it's a tough sell, but you know, it is a conflict of missions, it's confusing, it's outside of comfort zone, in the traditional regulatory realm and unfortunately, this, I think affordability is just not...I think their view is that congress is taking care of the affordability process, look at all of these billion of dollars. Well, that's why at the beginning of this conversation, I said look, this is great to get this infusion of cash, but the challenge is still there, there's ongoing O&N. I mean we haven't even begin to experience the cost of PFAS, especially if becomes a hazardous substance that will have frequent cost. We'll be moving to designer water just to meet higher standards. So this is going to be a monumental issue for the sector and for the long run of the environmental public health and we need to be efficient and smart where we can. I realize the environment shouldn't be the cheapest deal in town, you know, we need to be smart and I thought the financial capability guidance relating to CSOs was a good opportunity for that.

[Dave Ross]

So you mentioned PFAS, we've gotta go there, I think. Everyone is talking about it. Why don't you give us a little bit of perspective? I mean, obviously perfluorinated compounds, they're in the environment, they're in products, they're in the natural environment, they end up in our drinking water systems, like we don't' you give us AWWA's perspective on Perfluorinated compounds. We want to talk a little bit about the super fun liability question because I think that's coming, but let's dive in on that Tracy.

[Tracy Mehan]

Obviously it is a big issue. States have been out front of the federal government on this. And now we are kind of in a federal mode which I know started under your watch. And we've never opposed regulation, per se, we just said stick to the process – the science-based data-driven, systematic process - within the safe drinking water act. There was, you remember, a year ago efforts in congress to kind of short circuit that whole process and just mandate regulation of the entire class of PFAS which is gazillion. And we said no, you might be able to group a few based on their, you know, the toxic mode of action, etc. but, so we were never against, we just said EPA do it's work without legislative intervention. And I know there was a little prod in some legislation coming out of the senate side. But, we're working through it, we'll get into the notice and comment. We're paying our own research, as we always do,

trying to inform ourselves and our members and EPA. Hopefully again that spirit of mutual learning, and it's going to be a challenge, because well, you know the technology is granular activated carbon, that may work for a couple, but if they add 4, 5, 6 or whatever, you may be moving into RO and all of the sudden these costs are going to get pretty rough. I fear PFAS in long run will dwarf lead, as a cost item, but that kind of depends also what happens and this gets into your superfund question, if it becomes designated or x-number of PFAS compounds become a hazardous substance, well, then, you've got disposal cost going up. You've got potential liability under the strip joint. Several retroactive liability scheme of superfund, given that the utilities will probably under the arranger category of disposal of residual or bio solids, etc. You already see this flaring up in states such as Maine. So at all Water Associations, this is 100% consensus on this, waste water, drinking water, rural water is that there ought to be an exemption for water utilities, given the ubiquity of the compounds and given the, honestly the innocence of utilities, I mean we're just receivers of this stuff and the cost consequences and there was a letter where we attend associations that just went out during water week to the Hill and we'll see, we'll see where it goes. But we definitely are concerned about the overall cost, but hopefully, at the same time, be smart and at least get us out from under the superfund draconian liability net.

[Dave Ross]

So for our listeners out there, what the concern is in the water sector, you know Tracy used the phrase "the receivers" right? So there is PFAS, that will get into the water column, through other avenues and the drinking water plants and the waste water plants, as part of their treatment, takes out PFAS, which is a good thing, but once you take out PFAS, you have to manage that PFAS as it transfer to another environmental media and if there is a super fund liability listing, suddenly the water sectors potentially in the cross hairs of managing the hazardous waste and depositing of it and who should bear the cost of that, I think, is a significant policy question. Sounds like you guys are working the Hill on that. I assume you're probably also working the regulatory agencies because there is a path that the agencies are also regulated in this space.

[Tracy Mehan]

Last year we did have a discussion with OLEM [Office of Land and Emergency Management] and you know we outlined a purpose we had where you could maybe structure a designation under RCRA under CERCLA. It was a polite conversation. They heard us out, we provided some analysis. I know they say they're trying to look at the drinking water act regulations with sensitivity and one hopes the same is true with hazardous substance designations under CERCLA, Superfunding, excuse me, RCRA or whatever...

[Anna Wildeman]

Tracy, let's pivot a little bit. You mentioned Lead and Copper Rule a couple of times a couple of times. While Dave and I were leading the Office of Water, our team was able to promulgate revisions to the Lead and Copper Rule, for substantive revisions really after decades. When the Biden administration came in, they paused the implementation of those revisions to take another look at it, right. Eventually they agreed to implement those revisions, but also, commitment to making further revisions, to Lead and Copper Rule. Where is AWWA on the LCR revisions and do you think they're gonna be another set of revisions, realistically? Because it was a real battle, let's be honest, it's a battle to get that, you know, any movement on that rule, it's a huge package, so what are your thoughts?

[Tracy Mehan]

You know, we supported...we'll we're always on front for supporting a mandate to get on with inventories, that's just key. An information-based approach, it's fundamental to any kind of program to reduce the amount of lead service lines on private and public property. And you know, generally our members want to do right by public health, we think we've had a lot of success over the decades under the old rule. I think 90% of all utilities were in compliance with the or under the action levels to corrosion controls and as a nation, lead has been a great success and people forget that we've had a 95% reduction in median blood lead levels in kids 1-5 since the 70's. and you know I grew up in a house with lead service lines in South St. Louis, so I've lived through that, where we got it out of lead, we got it out of gasoline, we regulated it as a criterial pollutant under the Clean Air Act. We've had successful corrosion control implementation in drinking water utilities, wo I think we're ok. We can handle this and we want to go forward and utilities are beginning to move. I do think there's going to be some more changes, you know, that separates between the 15 and the 10 and the trigger level, I think that may get collapsed at 10. I mean we're kind of assuming that. I think some of the issue of the first and the fifth sample, I think you're going to see changes and we're kind of preparing our members that get on with the inventory, get that in place, but heads up, more is coming. So, we'd be disserving our members if we thought that the rules were not going to be tightened up a bit.

[Anna Wildeman]

Let me ask you a follow up question. You know I heard you talking about the improvement that we've made over decades, right. And so when we're talking about, and Dave you can provide a little more color on this, the 15 to 10, that the trigger versus the limit. Is your suggestion that the benefit of that incremental additional reduction may not be worth the extra cost or that OI would really take a hard look at that if they were to go through the full interagency review process?

[Dave Ross]

Well, I don't want to speculate, but we just, again, the process is key. You know, do we do the analysis, do we get it right? Benefit cost analysis is a technical and difficult thing to do, which is the problem the states have when they move out regulating say PFAS, they sometimes get the technologies right from the science, but they're not very good at the benefit cost analysis whereas OMB did have that expertise. As did EPA I just think we've got to do it and make sure we do it carefully. You can get into legitimate scientific and policy debates about how you do the benefit cost analysis, but it's just important that it be done and be transparent, you know, if you follow an alternative methodologies or you assume different discount rates. I meant that's all part of the process and usually that's all...and I expect that's going to happen. Again, I think where lead is more challenging is that historical, and again over 40-50 years now, whenever the research keeps showing it lower and lower levels, there's still harm and therefore more benefit when you reduce to those lower levels. So, it's just the nature of the beast. And of course in the case of lead service lines in old homes, there's also desperate impacts to lower income people, people in poor neighborhoods, older neighborhoods, etc., etc. As I say, if I had to flip a coin, I think we're going to see a tightening up of the regulation.

[Dave Ross]

I agree with you. I think in the current administration, I think, if you look back, historically in the lead service lines, you know for 8 years during the Obama administration, it was, you

know, that rule didn't move, partially because of the cost associated with it. Quite frankly, you mentioned OMB and OIRA [Office of Information and Regulatory Affairs], we had to go to war to try to get the LCRR out on the street, trying to justify the cost benefit analysis. There's no question that the standard for how much lead can go into the body versus how do you actually regulated it under the Safe Drinking Water Act. There's tension there, right? And so, I think it will be interesting, I thought in the last year when they paused the LCRR, I think they were trying to go for the money ball, the \$100 Billion, to take care of all the lead service lines. \$15 Billion was a great amount of money, but more is needed. So, I think it will be really interesting to see how this administration grabbles with the OIRA on the process to try and justify the cost benefit analysis. Well Tracy, I think that we could go all day. We have so many other topics I'd love to talk to you about, but I want to thank you for taking the time to join us today. Your career in the water sector is unparalleled, you know working for State servant, as the assistant administrator for Water. What you do now for the drinking water sector. I've appreciated your guidance over the...especially my time at EPA and even before and after. So, thanks for all you do for the water sector and we appreciate you joining us.

[Tracy Mehan]

Thank you for having me on this. It's a great forum to discuss issues of importance to us all and I am most grateful.

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