



Tax and Other Incentives to Preserve High Quality Water and Wastewater Service
And Promote Economic Development and Job Creation
American Water and National Association of Water Companies

Proposal

The purpose of this paper is to propose and support the adoption of one or more tax programs that will stimulate the continued investment of capital into critical water and wastewater infrastructure replacement and compliance with increasingly strict water quality standards. It will also help insure that communities have the necessary infrastructure to promote job creation and retention and overall economic development. The proposal is being made to ensure the availability of capital for the huge investment requirements the industry faces to continue providing high quality, reliable service to customers at a reasonable cost in light of the significant strains the current financial and credit crises impose on the ability to attract that capital. Such programs should be considered an important part of any overall economic stimulus package. They will facilitate capital investment in this most essential of all utility services, with direct, positive, and long term effects on the health, welfare, and economic development of communities throughout the U.S. This paper will discuss five proposals for tax and investment incentives, based on programs Congress has effectively used over the last 50 years to stimulate economic growth and encourage infrastructure investment during financially difficult times. These programs, together with a brief summary of the nature of the proposal are as follows:

- Investment Tax Credits: a 10% investment tax credit on all investments in water and wastewater infrastructure for the next three years;
- Public Utility Dividend Reinvestment: a five year deferral of tax on dividends, similar to the program in the Economic Recovery Tax Act of 1981, for all public utility dividends that are reinvested in infrastructure replacement;
- Tax Exempt Financing: lift the cap on Private Activity Bonds for all water and wastewater investments (this has already been introduced into this session of Congress);
- Accelerated Depreciation: 50% increase, or more, in depreciation rates for infrastructure replaced over the next three years;
- State Revolving Loan Funding (SRF): increase funding of these programs and insure access to all providers of water and wastewater services.

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Water Industry Overview

Of all the important public utility services that enhance our quality of life and are necessary for health, safety and economic development, only water is ingested into the body and is absolutely essential to human life. Yet, much of the infrastructure necessary to secure reliable sources of water, treat it, and distribute it to our citizens is ageing and beyond its anticipated useful life. In addition to ageing infrastructure that needs replacement, primary drivers of cost and the need for capital investment in the water industry are the Safe Drinking Water and Clean Water Acts. These Acts have as their goal the continuous improvement in the quality of drinking water supplies and our scarce water resources in general. Drinking water providers, under the Safe Drinking Water Act, for example, must already monitor and control for over 100 potential contaminants, and these requirements will increase over time.

In the last Infrastructure Needs Survey, conducted in 2005 by the USEPA, that agency estimated \$277 Billion would be required for drinking water service alone to replace ageing infrastructure and comply with increasingly strict water quality standards over the next 20 years. This represents an increase of about 80% over the previous USEPA Infrastructure Needs Survey published in 2002. Clearly, costs to replace essential infrastructure are rising, and fast! Furthermore, another 2002 USEPA report, the “Clean Water and Drinking Water Gap Analysis”, estimated that an additional \$388 Billion will be necessary to replace ageing wastewater infrastructure over the next 20 years. Taken together, the costs to replace necessary water and wastewater infrastructure over the next 20 years and comply with water quality requirements could approach \$1 Trillion.

It is important to note that investment in this infrastructure not only assures continued access to high quality water service, it is an important source of jobs and helps insure the availability of infrastructure necessary for growth and economic development in communities throughout the country.

Adding to the challenge of capital attraction is the fact the drinking water industry is the most capital intensive of all the traditional utility industries, such as electric, natural gas, and telecommunications. This means that it takes approximately \$3.50 of capital investment in the investor owned water industry to produce \$1 of revenue, compared to a range of approximately \$0.82 to \$1.63 for the other utility industries.

The structure of the water industry in the United States also significantly contributes to the challenge of capital attraction necessary to continue providing high quality, reliable service.



There are approximately 53,000 community water systems in the United States. Most of these systems are small, serving only a few thousand customers or less and may therefore be financially unable to attract the capital necessary to replace ageing infrastructure or technologically unable to deal with ever more complicated treatment processes necessary to comply with stricter quality standards. In part as a result of this fragmentation, the water industry has also not been able to achieve economies of scale the other utility industries have achieved, contributing to the challenges of capital attraction.

Although the majority of the drinking water service in the U.S. is provided by municipalities or some other form of government entity, a significant part of the U.S. population, about 16%, is served by investor owned water companies that are regulated by state public utility commissions with regard to rates and conditions of service. The investors in these companies are the source of the equity capital necessary to provide for replacement of ageing infrastructure and compliance with quality standards. The ability to attract this capital also directly impacts the ability to attract debt financing as well as the cost of that debt. Investor owned water companies have also played a significant role in many states in acquiring small financially and technologically non viable systems and providing the necessary capital to bring these systems into regulatory compliance and provide for replacement of ageing infrastructure.

Access to capital is essential if the investor owned water industry is to continue its important role in replacing the infrastructure necessary to continue providing high quality, reliable service to millions of people in the U.S., reducing the number of small non viable systems, and promoting economic development. Just at a time when necessary capital is so crucial to maintaining high quality, reasonably priced service to customers, however, the current financial and credit crises make it very problematic for the water industry to secure necessary capital at a reasonable cost, to the detriment of customers and long term reliable service.

Similar investment incentive programs have been adopted in the past by state and federal governments when an acute need has been perceived to stimulate investment in industries that significantly impact the public welfare. There is no more essential service that can be provided to our citizens than high quality, reliable drinking water; the capital investment requirements necessary to continue providing this essential service have never been higher, and are rapidly growing; and the financial and credit markets in which this capital must be raised have seldom been more problematic. Programs of the type described herein will help keep necessary investor capital flowing to meet the infrastructure and water quality challenges of the industry, will help that industry continue to assist in resolving the problems of small, non viable water systems, and will contribute to the creation of jobs and economic development in many communities. The rest of



this paper will summarize in more detail the programs identified earlier which were adopted in the past to meet critical capital investment needs.

Congressional Tax Incentive and Investment Programs

A. Investment Tax Credit:

Tax Rate Extension Act (TREA) of 1962¹

The Congress enacted the Investment Tax Credit (ITC) into law as the “primary tool with which to spur modernization and expansion of the country’s productive facilities and increase competitiveness in international markets.”² The ITC was based on a taxpayer’s qualified investment in tangible personal property including water property used in a trade or business or for the production of income. The qualified investment amount was predicated on whether the property was new or used and the property’s projected useful life. No limit was placed on new property with an expected useful life greater than four years; however, property with a life less than four years was ineligible and used property was limited to fifty thousand annually (\$50,000). TREA ‘62 employed a tiered system based on lives. For example, property with an expected useful life greater than four but less than six years, the qualified investment was one third of the investment. While qualified investment property with a life greater than six but less than eight years, was two thirds of the investment. Any property with a life longer than eight years received the full amount of the qualifying investment.

“The rate of the ITC, according to the 1962 Act, was 7 percent of the qualified investment in *IRC Section 38* (generally tangible personal property used in a trade or business or for the production of income) placed into service during the tax year. While the same 7-percent was applicable to public utility property, the amount of the qualified investment for such property was limited . . . [to] reduce the effective ITC rate for public utility property to 3 percent. Even at this reduced rate, the tax benefit of the ITC to many utilities was substantial.”³

“Congress limited the amount of the ITC available with respect to public utility property based on the belief that the benefit from the credit would be flowed through to utility customers in the form of lower rates, thereby producing lower tax revenues. In addition, Congress perceived that capital investment decisions of regulated utilities were determined primarily by projected customer demand for services and that, if growth in the underlying customer base were encouraged, public utilities would increase their investment in plant and equipment.”⁴

Revenue Act of 1971



In 1971 two years after ITC was repealed the Congress resurrected ITC “in an attempt to repair a sagging economy and lift unsatisfactory employment levels.”⁵ “The ITC, relabeled the “job development credit,” was generally available with respect to *IRC Section 38* property acquired (or for which construction was completed) after August 15, 1971. While the nature of the reinstated credit was similar to its predecessor, a number of operating rules were revised. In particular, the useful life thresholds for determining the qualified investment in *IRC Section 38* were generally shortened by one-year.”⁶

“Under the 1971 Act, the ITC could offset the entire first \$25,000 of liability and 50 percent of the tax liability in excess of \$25,000. The ordering rules for the utilization of the credit were modified. Carryovers relating to pre-1971 years were allowed to offset the tax liability before application of any current year ITC. Carrybacks and carryovers arising from ITC generated in 1971 and later years were applied against the tax liability after application of any current year ITC. The rate of the ITC available to most taxpayers remained unchanged at 7 percent. However, the amount of ITC available to regulated taxpayers, such as public utilities, was increased from an effective rate of 3 percent to an effective rate of 4 percent.”⁷

Tax Reduction Act (TRA '75) of 1975

“In an effort to stimulate the economy, the Congress increased the investment tax credit from seven percent (7%) to ten percent (10%).”⁸ TRA '75 “also increased the limit on qualified investment in used property from \$50,000 to \$100,000. For property with a life of three or four years, one-third of the investment was taken into account; for property of five or six years, two thirds was taken into account; and for property with seven years or more, the full amount of the investment was taken into account. The Act also introduced “progress payments,” which allowed a current investment tax credit on projects that would take at least two years to complete and had a life of seven years or more (the progress payments were phased in ratably over five years). Any unused credit could be carried back three years and carried forward seven years.”⁹



Tax Reform Act (TRA '76) of 1976

TRA '76 extended the ten percent (10%) credit and continued the \$100,000 limitation on qualified investment in used property, from 1977 through 1980.

Economic Recovery Tax Act (ERTA) of 1981

In 1980 America elected a new president amid difficult economic times. Interest rates were as high as twenty one and a half percent (21.5%) with unemployment reaching new record highs. In addition the housing and auto sectors were suffering as a result of the credit crunch due to high interest rates. In response to this difficult economic time Congress enacted Public Law No. 97-34 (ERTA).

ERTA revised the ITC rules to integrate with the new ACRS (discussed below). "The qualified investment eligible for the credit with respect to three-year recovery property was limited to 60 percent. The credit was computed with respect to one hundred percent (100%) of the qualified investment for five-year, ten-year, and 15-year public utility property. The carryover provisions for unused credit were extended from seven to 15 years. While qualified progress expenditures were no longer required to have an expected useful life of seven or more years. The 1981 Act also increased the used property limitation to \$125,000 (scheduled to rise to \$150,000 in 1985 and subsequent years) and accelerated the expiration of the additional 1-percent credit allowed in connection with qualified ESOPs."¹⁰

Tax Reform Act of 1986 (TRA 1986)

The thrust of the Tax Reform Act of 1986 was to remove from the Code many of the special tax incentives that had proliferated over the years, allegedly distorting and inhibiting market forces from efficiently allocating resources between competing sectors of the economy. One of the changes made under TRA 1986 was to repeal the investment tax credit for property placed in service after December 31, 1985. However, IRC Section 49, added by TRA 1986, excepted "transition property" from the general rule of repeal. Property met the definition of transition property, and qualified for the ITC, if it was placed into service by the taxpayer by the date specified for the property's class life under the ADR guidelines and it was 1) property acquired or constructed (reconstructed) pursuant to a written contract binding on the taxpayer as of December 31, 1985 and had a class life of more than six years or 2) property constructed (reconstructed) by the taxpayer if the lesser of \$1 million or 5 percent of the property's cost was incurred (or committed under a binding written contract) as of December 31, 1985 and



construction commenced by that date and had a class life of more than six years or 3) an “equipped building” or a “plant facility” if construction of the property began pursuant to a written plan and more than one half of the property cost was incurred or committed by December 31, 1985) property subject to a sale-leaseback transaction if the property is placed in service by a taxpayer acquiring the property from another person in whose hand such property would qualify for the ITC under a transitional or general effective date rule and the property is leased back by the taxpayer to such person and the leaseback occurs within three months after such property was originally placed in service but not later than the date prescribed for property with that ADR class life or 5) property required to perform under a written supply or service contract or written lease agreement entered into before January 1, 1986.¹¹ (Note: Congress passed legislation regarding normalization to fulfill the overall intent of providing a benefit to business for increased capital spending. Congress did this to prevent regulators from requiring the benefits from ITC and accelerated Depreciation be passed immediately to customers.)

B. Public Utility Dividend Reinvestment Plans:

In an effort to “stimulate capital formation through internal generation of funds,”¹² the Congress included in ERTA a provision to provide capital to public utilities for the purchase of new equipment through the reinvestment of dividends by shareholders. “The Congress believed that an appropriate way to realize this objective was to allow tax-free treatment of certain stock distributions made to shareholders of public utility corporations.”¹³

Under ERTA, “a domestic public utility corporation may establish a plan under which holders of common or preferred stock who choose to receive a distribution in the form of common stock rather than cash or other property generally may elect to exclude up to \$750 per year (\$1,500 in the case of a joint return) of the stock distribution from income.”¹⁴

“To qualify, the stock must be newly issued common stock, designated by the board of directors of the corporation to qualify for this purpose. The number of shares to be distributed to any shareholder must be determined by references to a value which is not less than 95 percent (and not more than 105 percent) of the stock’s value during the period immediately before (or including) the distribution.

Generally, the stock will not qualify if the corporation has repurchased any of its common stock within one year before or after the distribution date. However, if the corporation establishes a business purpose for the purchase not inconsistent with the purpose of the dividend reinvestment provision to aid in the raising of new capital, the purchase will not disqualify any distribution otherwise eligible for exclusion.



Stock received as a qualified reinvested dividend will have a zero basis, so that when the stock is later sold the full amount of the sale proceeds will be taxable. In general, gain from the sale of such stock will be taxed as capital gains. However, where a shareholder sells common stock sold after the record date for the distribution and not more than one year after distribution, all proceeds will be treated as ordinary income. This rule was intended to prevent immediate resale of stock without the recognition of ordinary income which would have resulted in the case of a taxable dividend.”¹⁵

C. Tax Exempt Financing:

“Federal income tax law has provided an exclusion for interest on bonds issued by or on behalf of State and local governments since the income tax was enacted in 1913. Throughout most of the twentieth century, State and local bonds primarily were issued to finance public infrastructure projects, e.g., schools, roads, public utilities, and mass transit systems. Federal tax law at that time, however, did not distinguish between bonds issued for public as opposed to private purposes.”¹⁶ The Supreme Court clarified the issue in the 1988 decision *South Carolina v. Baker*, 108 S.Ct. 1355 (1988), where the Supreme Court rejected the argument that the tax exemption for State and local bonds is constitutionally protected. The Supreme Court’s decision in *Baker* removed most constitutional constraints on congressional action to tax and restrict municipal finance.

In 1954, the Internal Revenue Service ruled favorably on the use of tax-exempt revenue bonds¹⁷ to provide financing for private businesses.¹⁸ “In response to the increased volume of bonds issued for private activities, Congress, as part of the Revenue Adjustment Act of 1968 (the “1968 Act”), enacted the first statutory provisions limiting the circumstances under which interest on such bonds would be tax exempt. Specifically, the 1968 Act provided that interest on industrial development bonds (“IDBs,” the original private-activity bonds) generally is taxable. IDBs were defined as obligations: (1) more than 25 percent of the proceeds of which were to be used in a trade or business carried on by a nonexempt person (any person other than a governmental unit or a 501(c)(3) organization), and (2) the payment of more than 25 percent of the principal or interest on which was to be derived from or secured by money or property used in a trade or business.”¹⁹

Congress stated that the interest income on IDBs should be taxable because such bonds “were not ‘obligations of a State or any political subdivision’ within the meaning of IRC §103 since the primary obligor was not a State or political subdivision.”²⁰ Exceptions were provided, however, in the form of a list of activities for which tax-exempt IDB financing could be provided. The original exempt activities were: (1) residential real property for family units capable of maintaining families



on a non-transient basis; (2) sports facilities; (3) convention or trade show facilities; (4) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities related to one of the above; (5) sewage or solid waste disposal facilities, or facilities for local furnishing of electric energy, gas, or water; and (6) air or water pollution control facilities.

“Although the 1968 Act imposed the first statutory restrictions on tax-exempt financing for private activities, it also left large exceptions to the prohibition and issuances increased.”²¹ Congress continued to shape the tax exempt financing arena through legislation in 1980 and 1982 but the growth in tax exempt bond financing continued. In response to the continued growth in volume of private activity bonds, Congress enacted the Deficit Reduction Act of 1984 (DRA '84) (P.L.98-369) which imposed volume limitations (volume cap under IRC §146) on the aggregate annual amount of private activity bonds that could be issued by each state and its political subdivision. In addition, DRA '84 provided that interest on bonds issued to provide loans to nonexempt persons were taxable.

“The Tax Reform Act of 1986 (TRA '86) (P.L. No. 99-514) made significant changes to the rules regarding all tax-exempt bonds. TRA '86 retained the tax-exemption for interest on State and local government bonds used to finance traditional government operations, but adopted new tests to restrict the diversion of governmental bond proceeds for private purposes not specifically authorized to receive tax-exempt financing. Specifically, TRA '86 provided that a bond is not a tax-exempt bond if it is a private activity bond. TRA '86 defined a private activity bonds as any bond that satisfies (1) the private business use test and the private security or payment test (“the private business test”); or (2) “the private loan financing test.” The private business test is a modified version of the two-part test used to define IDBs under prior law, but the thresholds for impermissible private use and private payments were tightened from 25 percent to 10 percent.”²²

“TRA '86 continued many of the prior-law exceptions allowing tax-exempt financing for certain private activities. Under TRA '86, the definition of a tax-exempt, qualified private activity bond included: exempt facility bonds, . . . , and qualified redevelopment bonds. TRA '86 eliminated sports facilities, convention and trade show facilities, parking facilities, private pollution control facilities, and industrial parks from the list of facilities eligible for tax-exempt financing. Eligibility was extended, however, to hazardous waste disposal facility bonds and qualified redevelopment bonds.”²³

“Prior law contained separate volume limitations for (1) IDBs and student loan bonds, (2) mortgage bonds, and (3) veterans' mortgage bonds. TRA '86 provided a unified State annual volume limitation (“volume cap”) for most qualified private activity bonds. TRA '86 set the volume cap for each State at the greater of \$50 per resident or \$150 million per annum.



Qualified 501(c)(3) bonds and exempt facility bonds for governmentally owned airports, docks and wharves and governmentally owned solid waste disposal facilities were not subject to volume limitations under TRA '86."²⁴

"Generally, TRA '86 requires 95 percent of the net proceeds of qualified private activity bonds to be spent for the exempt purpose of the borrowing. TRA '86 also limits the amount of issuance costs that may be paid from most private activity bond proceeds to two percent and further provides that amounts paid for costs of issuance are not treated as spent for the exempt purpose of the borrowing (i.e., are not counted in determining whether the 95 percent requirement, etc. is satisfied)."²⁵

TRA '86 extended the public approval requirements that previously applied to IDBs to all private activity bonds. The maturity restrictions on IDBs were extended to qualified 501(c)(3) bonds under TRA '86, and qualified 501(c)(3) bonds (other than hospital bonds) were subject to a \$150 million per institution limit on outstanding bonds.

Congress has continued to monitor the tax exempt financing arena by making modifications in subsequent legislation. Most notably Congress enacted the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (*Pub. L. No. 105-277*), which increased the volume cap that applies to private activity bonds to \$75 per resident of each State or \$225 million, whichever is greater. An option for Congress to consider would be to remove the volume cap restriction on water utilities companies similar to other exempt activities that are not subject to the volume cap under IRC §146(g).

D. Accelerated/Bonus Depreciation:

Accelerated Cost Recovery System

Prior to the enactment of ERTA, "the depreciation system was based on estimated useful lives determined either using facts and circumstances or by using guideline lives in Treasury guidance."^[26] The useful lives were generally applied to calculate depreciation deductions using a straight-line method.

In 1981, the prior law depreciation system was replaced with the Accelerated Cost Recovery System ("ACRS").^[27] ACRS was a system for recovering capital costs using accelerated methods over predetermined recovery periods that are generally unrelated to, but shorter than, prior law useful lives. The ACRS system significantly accelerated depreciation on tangible personal property. For example, pre-ACRS, machinery used in producing textiles may have been depreciated over the mid-point of the 11-year class life using the straight-line method. Post-ACRS



the same machinery would have received a 5-year recovery period (the class life was between four and 18.5 years) using a 150 percent declining balance method (200 percent declining balance after 1985).”²⁸

Modified Accelerated Cost Recovery System

The Tax Reform Act of 1986 revised the Accelerated Cost Recovery System and renamed it the Modified Accelerated Cost Recovery System (MACRS). MACRS applies to property placed in service after December 31, 1986 except for property covered by transition rules. The depreciation methods applicable to the personal property classes are accelerated using a 200 percent or 150 percent declining balance switching to the straight-line method at a time that maximizes the depreciation allowance. Real property is depreciated using the straight-line method.

Bonus Depreciation

Job Creation and Worker Assistance Act of 2002

In 2002 Congress, responding to a faltering economy and terrorist attacks in New York and Washington D.C., decided to enact the Job Creation and Worker Assistance Act (JCWAA) of 2002. JCWAA “provided an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified property. The additional first-year depreciation deduction was allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property was placed in service. The basis of the property and the depreciation allowances in the placed-in-service year and later years were appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there were no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer’s alternative minimum taxable income with respect to property to which the provision applies.”²⁹

The bonus depreciation significantly accelerated allowable deductions by providing an additional thirty percent (30%) deduction above existing depreciation amounts for qualifying property. “For property to qualify for the additional first-year depreciation deduction, it must have met all of the following requirements. First, the property must have been property to which the general rules of MACRS apply: (1) with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property.

Second, the original use of the property must have commenced with the taxpayer on or after September 11, 2001. Third, the taxpayer must have purchased the property within the applicable time period. Finally, the property must have been placed in service before January 1, 2005. An



extension of the placed in service date of one year (i.e., January 1, 2006) was provided for certain property with a recovery period of ten years or longer and certain transportation property. The applicable time period for acquired property was: (1) after September 10, 2001, and before September 11, 2004, and no binding written contract for the acquisition was in effect before September 11, 2001, or (2) pursuant to a binding written contract which was entered into after September 10, 2001, and before September 11, 2004.”³⁰

Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003

Again in 2003 Congress, responding to heightened geopolitical uncertainties and perceived risks that arose before the invasion of Iraq, provided an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Taxpayers were permitted to elect out of the 50-percent additional first-year depreciation deduction for any class of property for any taxable year.

Qualified property was defined in the same manner as under the JWCAA, except that the applicable time period for acquisition or self construction of the property and placed in service date requirements were modified. “Property for which the 50-percent additional first-year depreciation deduction was claimed was not eligible for the 30-percent additional first-year depreciation deduction. In order to qualify, the property must have been acquired after May 5, 2003, and before January 1, 2005, and no binding written contract for the acquisition was in effect before May 6, 2003. With respect to property that was manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must have begun the manufacture, construction, or production of the property after May 5, 2003. This provision also extended the placed in service date requirement for certain property with a recovery period of 10 years or longer and certain transportation property to property placed in service prior to January 1, 2006 (instead of January 1, 2005).”³¹

Economic Stimulus Act of 2008

Finally, in February of 2008 Congress, responding to the deteriorating economy fueled by the decline in the housing sector, reinstated bonus depreciation to spur economic growth. Under the new law, companies are entitled to depreciate fifty percent (50%) of the adjusted basis of certain qualified property during the year the property is placed in service. This is similar to the special depreciation allowance that was previously available under the JGTRRA. “To qualify for the 50% special depreciation allowance under the new law, the property must be placed in service after Dec. 31, 2007, but generally with a contract date before Jan. 1, 2009.”³²



E. State Revolving Loan Funds (Non-taxation issue)

The primary federal funding programs for drinking water and wastewater utilities are the Clean Water State Revolving Fund and Drinking Water State Revolving Fund (SRFs).

The 1987 Clean Water Act Amendments and the 1996 Safe Drinking Water Act Amendments established the funds under the Federal Water Pollution Control Act and the Safe Drinking Water Act respectively, primarily for the construction of water and wastewater facilities.

The SRFs are an efficient method for providing federal assistance to utilities. The recipients of SRF loans – utilities -- repay the principal and interest to the funds and capital then becomes available to finance new projects, allowing the funds to “revolve” over time. To ensure the best return on taxpayer investment and economic sustainability of the water and wastewater utility sector, the SRFs should be the conduit Congress and the Obama Administration utilize to funnel economic stimulus dollars for water infrastructure.

While private water service providers are on record supporting increased funding for the SRFs as a means of economic stimulus, we encourage Congress at the earliest possible date to address an inequity with the Clean Water SRF so all Americans can enjoy the economic benefits of the fund equally. Congress should amend the Clean Water SRF to bring it in line with the Drinking Water SRF and allow private utility access. The economic benefits of lower interest loans the SRFs provide are passed onto our customers (the Public Utility Commissions assure this), so this is a fairness issue for our customers.

Conclusion:

In addition to direct funding mechanism like the SRFs, this legislative history provides evidence that Congress when faced with difficult economic times and a faltering economy will attempt to stimulate the economy and promote the general welfare through various tax incentives. ITCs, Bonus Depreciation, Dividend Reinvestment Plans and Tax Exempt Financing provide economic incentives to investors to continue investment in the infrastructure necessary to insure continued access to high quality water service, and which will also spur economic development and job creation in a depressed economy.

¹ Pub. L. No. 87-508, sec. 2 (1962)

² Richard E. Matheny, *Taxation of Public Utilities*, Pub. 00761, Rel. 13 §4.04, 4-4 (Matthew Bender & Company, Inc., August 2006)

³ Supra



⁴ Supra

⁵ Pub L No 92-178, 92d Cong, § 101, (1971)

⁶ Richard E. Matheny, *Taxation of Public Utilities*, Pub. 00761, Rel. 13 §4.04, 4-16 (Matthew Bender & Company, Inc., August 2006)

⁷ Supra

⁸ Pub. L. No. 94-12, §§ 301-2, 304 (1975)

⁹ Joint Committee on Taxation, *Overview of Past Tax Legislation Providing Fiscal Stimulus and Issues in Designing and Delivering a Cash Rebate to Individuals*, 18, (JCX-4-08), January 21, 2008.

¹⁰ *Taxation of Public Utilities*, Pub. 00761, Rel. 13 §4.04, 4-24

¹¹ id §4.17, 4-26

¹² Joint Committee on Taxation, *General Explanation of the Economic Recovery Tax Act of 1981*, 16 (JCS-71-81), December 29, 1981.

¹³ Supra

¹⁴ Supra

¹⁵ Supra

¹⁶ Supra

¹⁶ Joint Committee on Taxation, *Present Law and Background Relating to State and Local Government Bonds*, 12 (JCX-14-06), March 14, 2006.

¹⁷ “Revenue bonds” are bonds payable solely from revenue derived from the property financed with bond proceeds. For example, bonds payable solely from tolls generated from the use of a road financed with such bonds would be revenue bonds. In contrast, “general obligation bonds” are bonds secured by the “full faith and credit” of the issuer, i.e., the issuing government makes an unconditional pledge to use its taxing powers to raise revenues to support debt service payments on the bonds.

¹⁸ Rev. Rul. 54-106, 1954-1 C.B. 28.

¹⁹ Joint Committee on Taxation, *Present Law and Background Relating to State and Local Government Bonds*, 12 (JCX-14-06), March 14, 2006.

²⁰ H.R. Rep. No. 90-533, at 32 (1968).

²¹ Supra

²² Supra

²³ Supra

²⁴ Supra

²⁵ Supra

²⁶ See Rev. Proc. 62-21, 1962-2 C.B. 418, for guideline useful lives.

²⁷ Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, sec. 201 (1981).

²⁸ Joint Committee on Taxation, *Overview of Past Tax Legislation Providing Fiscal Stimulus and Issues in Designing and Delivering a Cash Rebate to Individuals*, (JCX-4-08), January 21, 2008.

²⁹ Supra

³⁰ Supra

³¹ Supra

³² Supra