

March 25, 2010

Independent Expert on the issue of human rights obligations related
to access to safe drinking water and sanitation

ESCR Section

Special Procedures Division

UNOG-OHCHR

Palais des Nations

CH-1211 Geneva 10,

Switzerland



Re: Private Sector Participation in the Provision of Water and Wastewater Services

Dear Sir or Madam,

Water is vital, and along with most other vital things, the market has proved exceptional at providing it. The closest analog is food, which the market provides, as it does medicines and health care. The long and successful track record of privatization and public-private partnerships (PPPs) for water and wastewater services in the United States, with thousands of satisfied communities, reveals that activist concerns about a supposed adverse relationship between privatization and a “human right to water” to be mainly rhetorical, rather than factual, in basis.

The United States faces enormous challenges in water and wastewater infrastructure and service delivery. Many water and wastewater systems include water and sewer infrastructures that date back to the early 1900s. The most recent systems were built with federal funds during the 1970s, and even these now need upgrading or replacing. The nation’s drinking water systems will require \$335 billion in capital investment by 2027, according to a 2009 U.S. Environmental Protection Agency (EPA) report. Wastewater systems will require similarly large levels of investment, and in total the U.S. currently faces nearly \$1 trillion in critical drinking water and wastewater investment needs over the next two decades for which public funds are scarce, or nonexistent.

Further, in recent decades, through the Clean Water Act and the Safe Drinking Water Act and their subsequent amendments, standards governing the quality of drinking water and cleanliness of effluent discharged into waterways have become ever more stringent. To meet these increasing standards, many local water and wastewater systems require improved technologies and upgraded infrastructure. But at the same time, the federal government has reduced its contributions to local water systems over the past several decades, while at the same time imposing stricter water quality and effluent standards under the Clean Water Act and Safe Drinking Water Act. Unfunded mandates are forcing municipal systems to meet federal regulations through local sources of revenues or state revolving loan funds, at the same time that the widespread fiscal crises in state and local governments in the wake of the 2008-2009 recession are forcing policymakers to cut spending on public services and facility maintenance and defer infrastructure investments.

Even in healthy economic times it is often difficult for local officials to commit to making necessary investments in water and wastewater infrastructure. Water pipes and sewer mains are not visible and not perceived by policymakers as immediately critical for adequate funding. It is easier for elected officials to ignore them in favor of expenditures for more visible services, such as public safety and education. Additionally, water and sewer rates do not adequately cover the actual cost of providing services in many municipalities, but raising water and sewer rates to cover operations and maintenance as well as capital replacement is unpopular among elected officials. These combined factors have led to a capital-funding crisis for water and wastewater that, over time, tends to yield the same outcome—chronic underinvestment in these vital systems, leading to deferred maintenance and subpar operations that accelerate their deterioration.

Put simply, the public sector is failing at prioritizing, funding and delivering water and wastewater projects sufficient to meet current and future demands. The need to supplement and support the public sector's efforts with private sector capital and PPPs has never been more acute.

Out of approximately 54,000 publicly-owned water and wastewater systems, over 2,400 contract with private firms to provide system operations and maintenance services, and over 20 percent of the U.S. population—tens of millions of Americans—are served by approximately 20,000 private, regulated water and wastewater utilities, ranging from systems for large urban areas to small rural communities. The U.S. military has also made extensive use of PPPs for the delivery of water and wastewater services across many of its bases and facilities.

Regardless of size or scale, the private firms that provide water and wastewater services to governments and communities are subject to the same environmental and safety regulations as publicly-managed utilities, and all fall under the regulatory supervision of federal, state and local governments that protect the public interest through control of rates, performance and operating standards and numerous other regulatory and legal mechanisms. Government remains responsible for establishing and enforcing quality and reliability standards, while private service providers have every legal obligation and incentive to ensure the same.

Further, PPPs offer public authorities access to management expertise and technological innovation that might not be available in-house, and they are routinely used to transfer important risks—including capital risk, project delivery risk, appropriation risk, and regulatory compliance risks—from the public sector to their private sector partners.

The long track record of success in water and wastewater PPPs in the U.S. prompted the EPA to assert in 1999 that, “[Privatization case studies] provide concrete examples to local officials of how successful partnerships and other models can be used by communities to provide needed environmental services more efficiently. They also show how public-private partnerships can be used as a way to provide substantial benefits to both the public and private sectors, creating the classic “win-win” situation.” Indeed, a 2009 survey by *Public Works Financing* found that government clients appear to be very satisfied with their current private sector contracts, as the water industry's contract renewal rate has averaged nearly 95 percent since 2005 in the U.S.

U.S. governments continue to embrace private sector financing, operation and maintenance of vital water and wastewater systems, and to meet the capital investment, environmental and public safety challenges of the 21st century this trend will need to accelerate. The public sector has proven that it cannot address these challenges alone, and policymakers and government managers are increasingly recognizing the imperative to put the private sector to work in the public interest of delivering critical water and wastewater services.

Thank you in advance for your consideration. As a think tank with decades of research on PPPs and their applicability to water, wastewater and many other types of vital infrastructure, Reason Foundation would welcome the opportunity to be of further assistance to your work. Please feel free to contact us if you have questions or would like additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leonard Gilroy". The signature is fluid and cursive, with the first name "Leonard" being more prominent than the last name "Gilroy".

Leonard Gilroy
Director of Government Reform, Reason Foundation