

Affordability is in the Eye of the Beholder

NACWA Law Seminar

Amanda Waters, General Counsel
SD1 of Northern Kentucky
November 17, 2010





SD1 Stats

Sanitary System

- 2nd largest public sewer utility in KY
- 3 counties; 30 cities
- 220 sq mile service area
- ~90,000 customer accounts
- 1,600 miles of sewer line

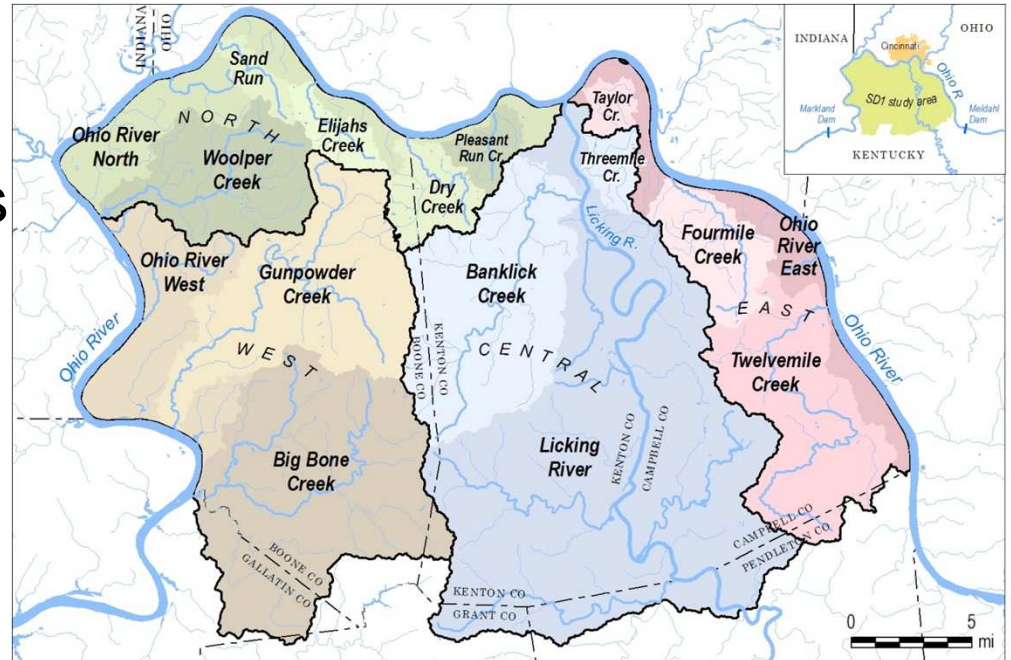
Storm Water System

- Began taking over O&M for counties & cities in 2009
- 28 have transferred system to SD1
- 250 miles of SW line
- 17,800 storm sewer structures

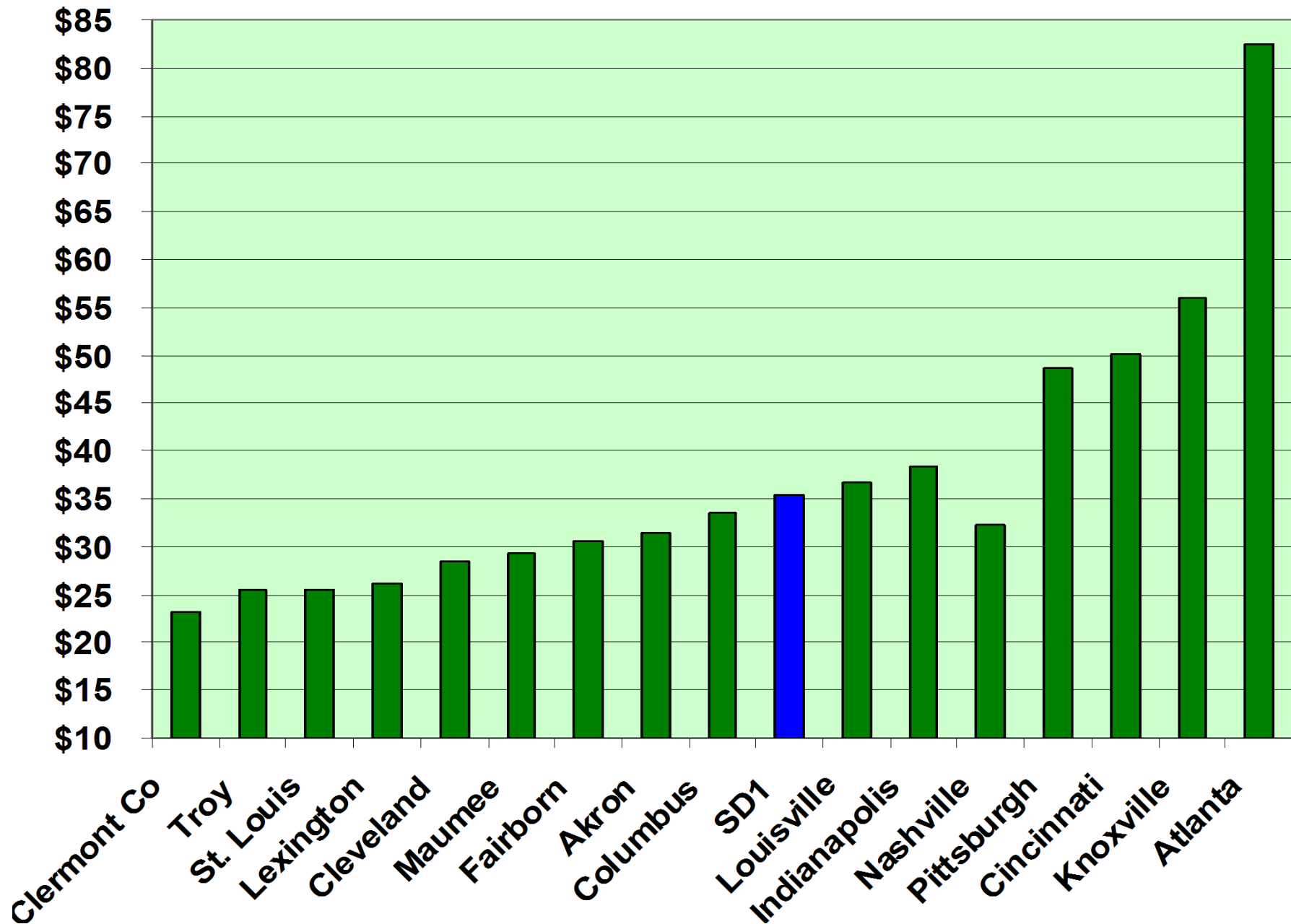
\$1 Billion in Fixed Assets

SD1's Watershed Based Consent Decree

- Entered on April 18, 2007
- Requires SD1 to develop and implement Watershed Plans
 - Address CSOs and SSOs
 - Updated every five years
 - Must contain long-term 20-year conceptual plan
- First Watershed Plans submitted June 2009
- Final Plan Completion: December 31, 2025

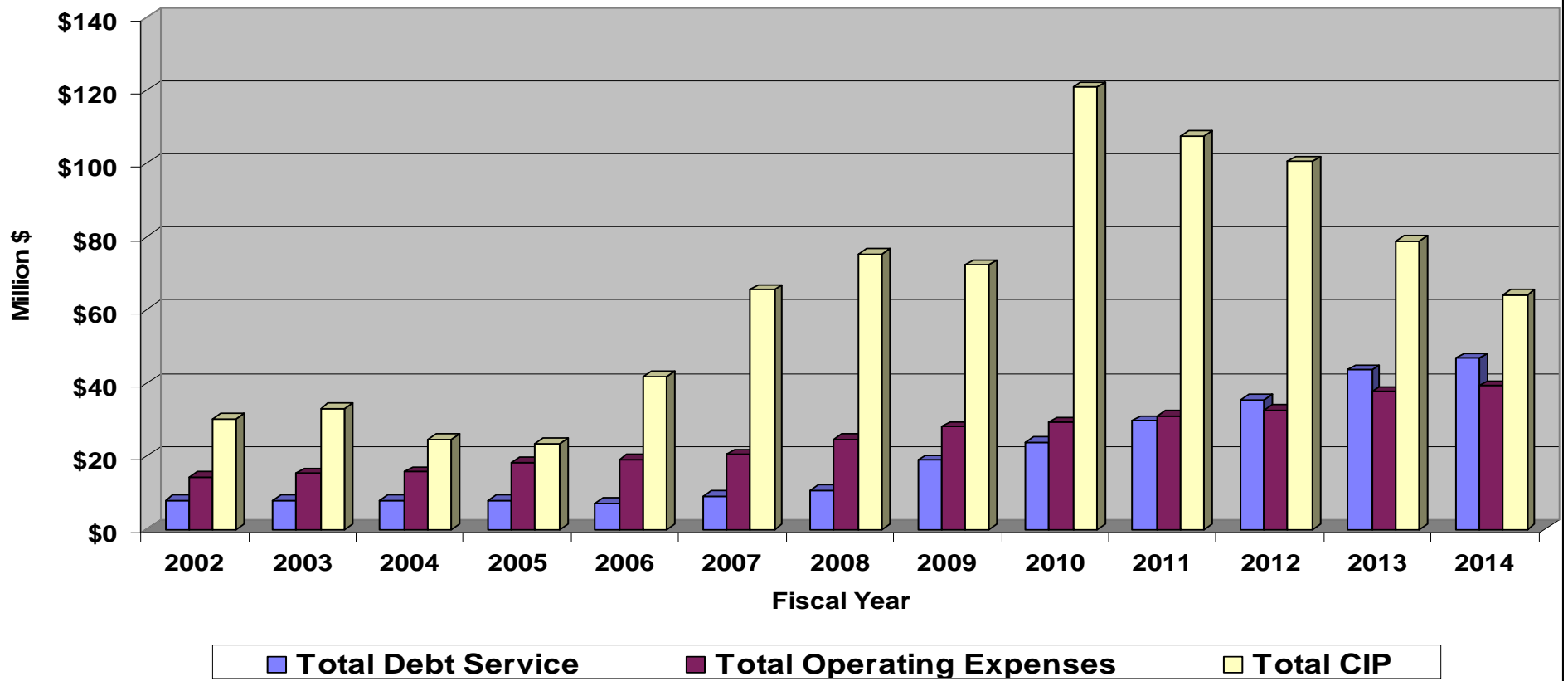


August 2010 Sewer & Water Rates - Survey
7 HCF per Month - Residential



Expenses

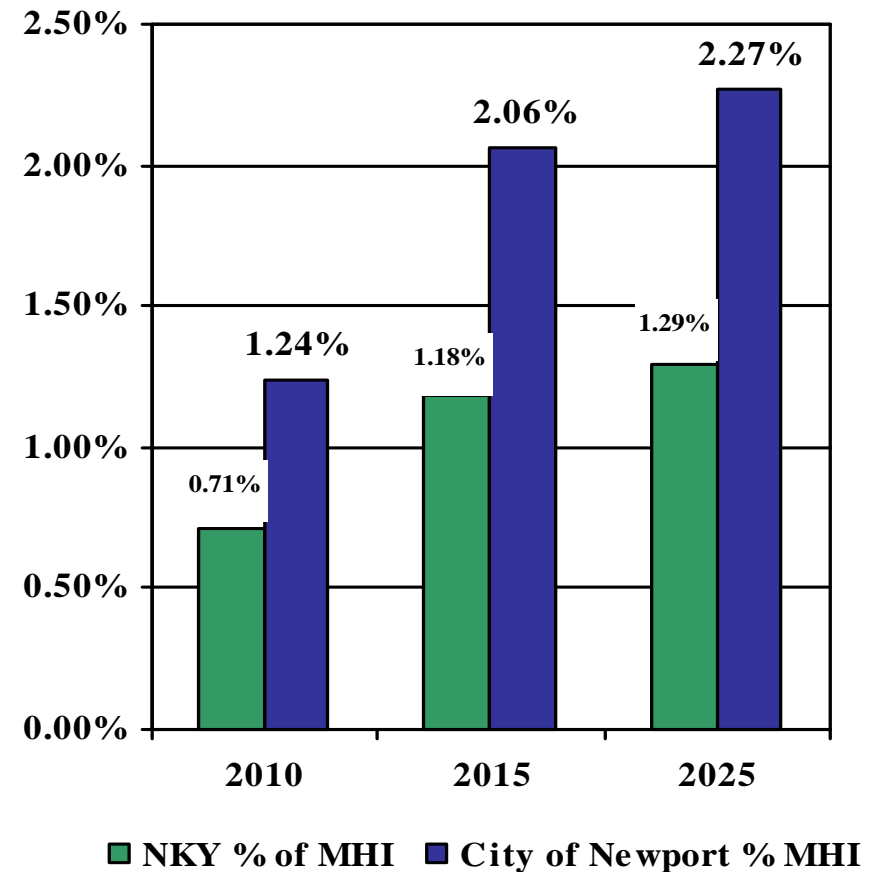
SD1 Expenses: Debt Service, Operating, Capital Spending



Increasing Rates



■ SD1 Monthly Rate (7 HCF)



■ NKY % of MHI ■ City of Newport % MHI

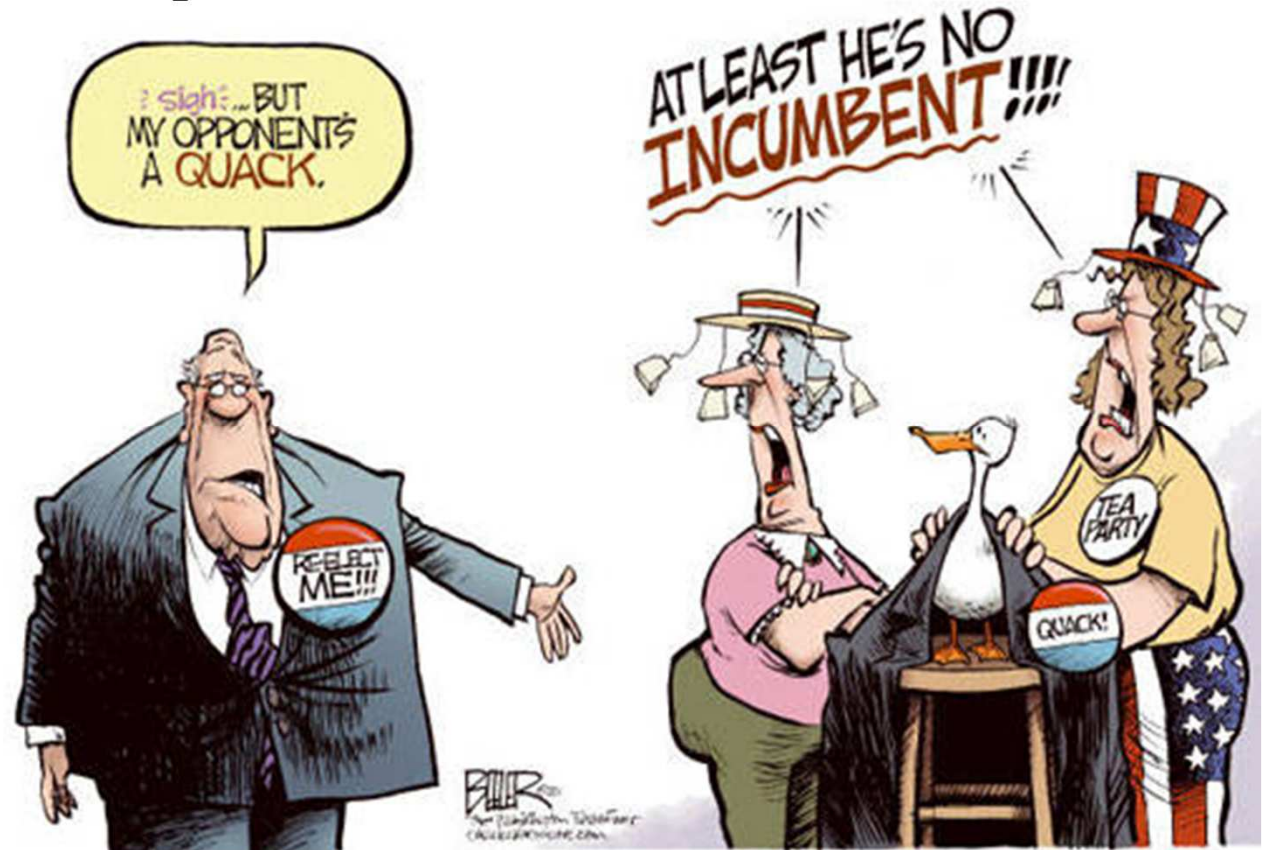


SD1's Perspective on Consent Decree Spending

- Spending hundreds of millions trying to keep up with outdated clean water regulations
- Ratepayers are not getting the return on investment that is needed
- Dedicated to protecting the environment but have a fiduciary duty to ensure money is spent wisely
- Need real policy change so that we don't throw money down the drain at a time when our communities cannot afford it

Local Ratepayer Perspective

- Recent Election
- Strong Tea Party Influence



Tea Party Perspective

- Some think current rates are too high
- Others do not want to pay anything
- Do not want SD1 to use any stimulus money
- SD1 should be dissolved and Consent Decree vanishes

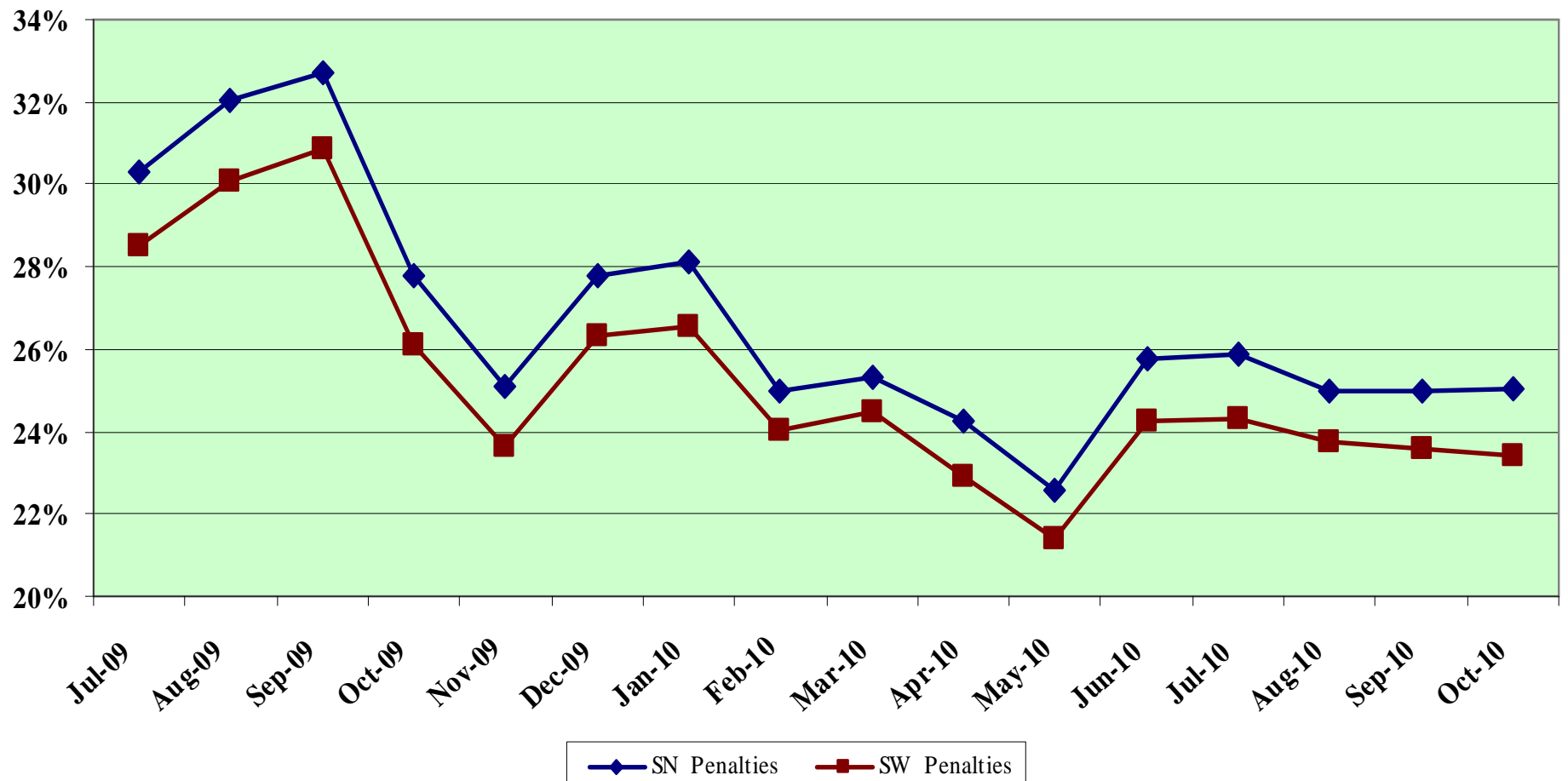




Blogs/Customer E-mails

- “...15% rate increases for the next decade is outrageous! It isn't the federal government's fault, it's the SD1 bureaucracy's fault...”
- “...We realize there are old decrepit sewers that allow sewer to enter the river and it needs to be dealt with. However raising sewer and water rates to pay for it in such a short amount of time is ridiculous. \$30.00 a month is insane...”
- “You got to f----- kidding me. You want me to write a \$5 check each month for sanitation I don't even have...You idiots have gone too far with this unconstitutional c---.”

Number of SD1 Accounts Penalized for Late or No Pay as a Percentage of Billings



National Perspective

JOEL PETT
USA TODAY



EPA Perspective

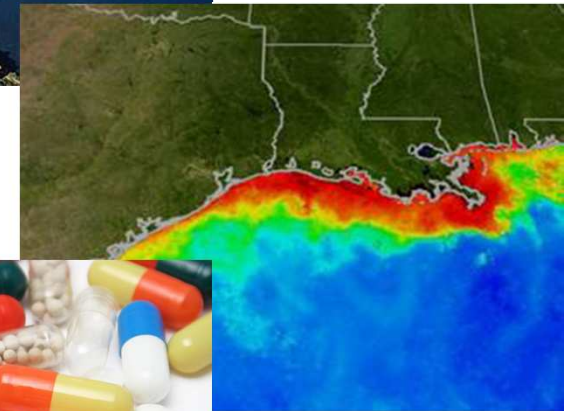
- Will EPA push to the brink of bankruptcy and beyond?
- How will elections affect perspective?
- Kinder, gentler EPA?



*The Black Pearl
of EPA Wisdom*

New Regulations on the Horizon

- Ohio River Bacteria TMDL
- Nutrient Removal- Nitrogen/ Phosphorous
- Storm Water Regulations
- Contaminants of Emerging Concern





Affordability Impacts on SD1

- Ability to collect customer rates
- Ability to increase rates to cover rising costs
- Ability to obtain funding for project needs
- Ability to maintain strong credit rating
- Cost of funding



Washington and the Clean Water Act is Broken – Need Change!

- Worked for Democrats in '08 and the Republicans in '10
- Time to consider
 - Affordability
 - Green
 - Time
 - Carbon Footprint
 - Performance standards rather than specific designs



**SD1's
Affordability
Strategy**

**KY General
Assembly**

EPA

**Congress
(ORSANCO/
NACWA *Money
Matters*)**

**HQ (US
Conference of
Mayors)**

Region 4

House Bill 504: KRS 224.16-040

- Passed 2010
- Bipartisan; nearly unanimous
- Addresses:
 - CSO Permits
 - CSO/SSO LTCPs, and
 - CSO/SSO enforcement






House Bill 504

- Requires Kentucky Energy and Environment Cabinet to consider (as allowable under federal law):
 - *Limitations on a community's financial capability;*
 - *Effectiveness and affordability of control options/technologies;*
 - *Promotion of green infrastructure;*
 - *Reducing economic impacts;*
 - *Allowing flexibility in the design of sewer improvements and implementation of control plans.*



What does HB 504 accomplish?

- Forces state to consider affordability factors independently of EPA and CSO guidance
- Sets stage for state to come up with specific guidance
- If end up in a fight before federal judge, state legislation will be very beneficial
 - Judge has to ask state what they think about affordability



How will HB 504 affect EPA's consideration of affordability?

- Encourages EPA to work with state/local communities to develop realistic budget
- EPA gets what it wants:
 - Not asking EPA to relax regulations
 - Want to improve water quality
 - Use flexibility that already exists in EPA Guidance



Enacting State Legislation 101

- Timing is right – economy helps
- Prepare real world examples/local case studies of affordability issues
- Draft proposed legislation
 - Supremacy Clause
- Get input/support from state regulatory agency



Enacting State Legislation 101

- Get Support
 - Local Leaders:
 - Mayors - Petition/City Resolutions
 - Obtain express authority to use local leaders' names when visiting legislators
 - Have local leaders directly contact legislators
 - Chamber of Commerce
 - Other Utilities
 - Other Stakeholders (Rural Water, HBA, Tea Party)
- Find sponsor
 - Consider hiring lobbyist
 - Think strategically about sponsorship
- Committees/Both Houses
- Educate and work with Governor's Office

Enacting State Legislation 101

Give Recognition

- Representative Kevin Sinnette (100th) was awarded one of the Legislator of the Year Friend of Kentucky Cities awards from the Kentucky League of Cities in Louisville at their annual convention on September 16th 2010.

Representative Kevin Sinnette's recognition was due to his drafting, filing and final passage of House Bill 504. HB 504 dealt with affordability of combined sewer unfunded mandates handed down from the federal government pursuant to the Clean Water Act. HB 504 considers the costs of infrastructure improvement projects and maximization of environmental benefits when negotiating and implementing improvement plans with local communities.





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Region 4



US Conference of Mayors

- Bipartisan effort
- December 9 meeting with Cynthia Giles (EPA OECA) and John Cruden (DOJ)
- Position Paper - “Local Government Recommendations to Increase CSO/SSO Flexibility in Achieving Clean Water Goals”
 - EPA’s 1994 CSO Control Policy/1997 CSO Financial Capability Guidance allow for a much more flexible approach on affordability
 - Where is flexibility in enforcement actions and negotiated settlements?
 - Urges EPA/DOJ to issue joint memo to all Regional Offices:
 - Adopting flexibility options
 - Endorsing use of green infrastructure techniques
 - Pushing consideration of carbon footprint impacts
 - Not asking for a pass



US Conference of Mayors: What can you do?

- Talk to your mayor(s)
- Encourage them to join forces with US Conference of Mayors on this initiative
- Look for direction from Conference/NACWA after Dec. 9 Meeting
 - How was message received by EPA?
 - Next steps?



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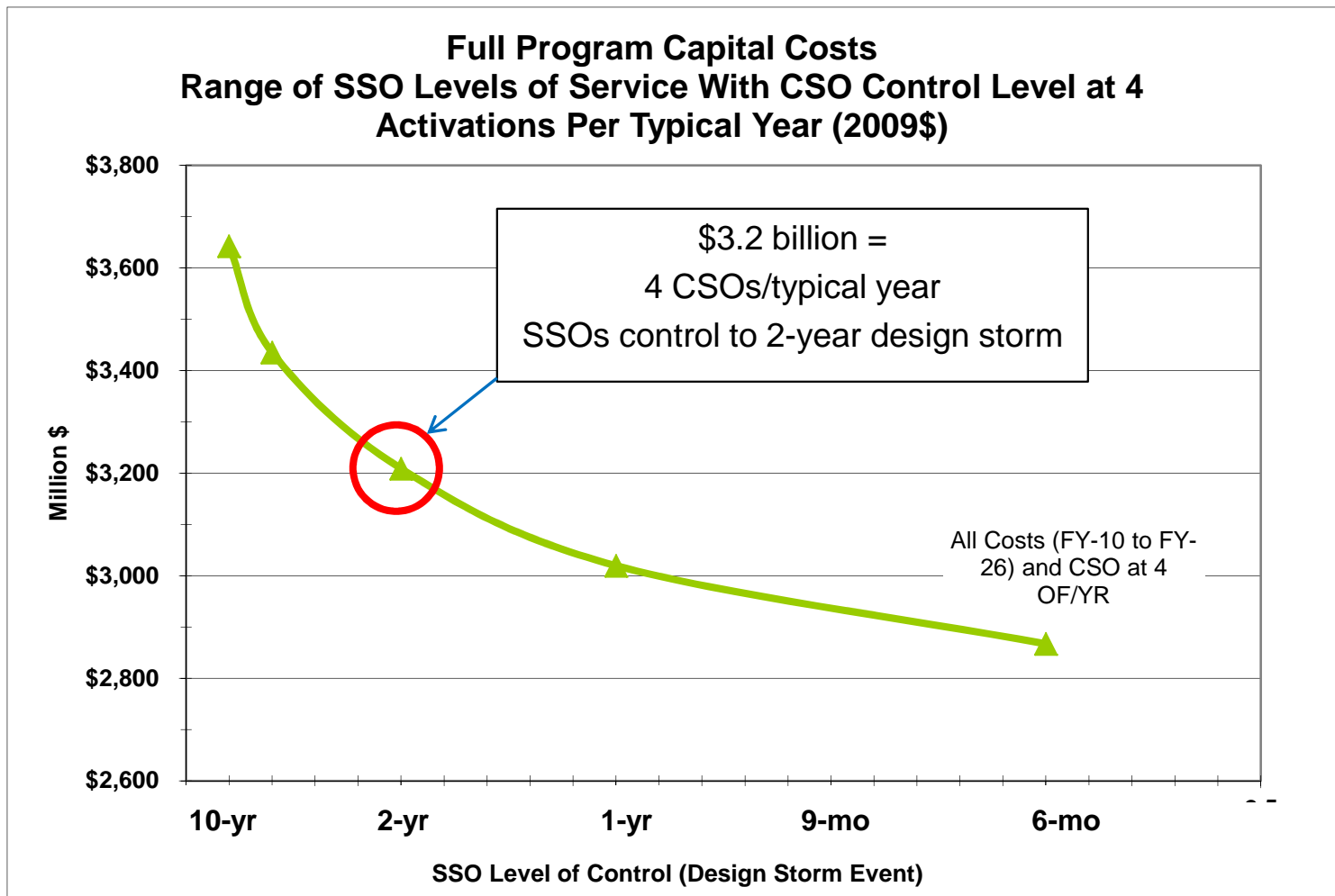
Region 4



Timeline

- May 17, 2010 – Received unofficial comments from EPA/KDOW
- June 29, 2010 – Meeting held in Nashville between SD1, KDOW, EPA HQ and Region 4
- July 22, August 12, August 26, September 9, September 15 – Conference Calls

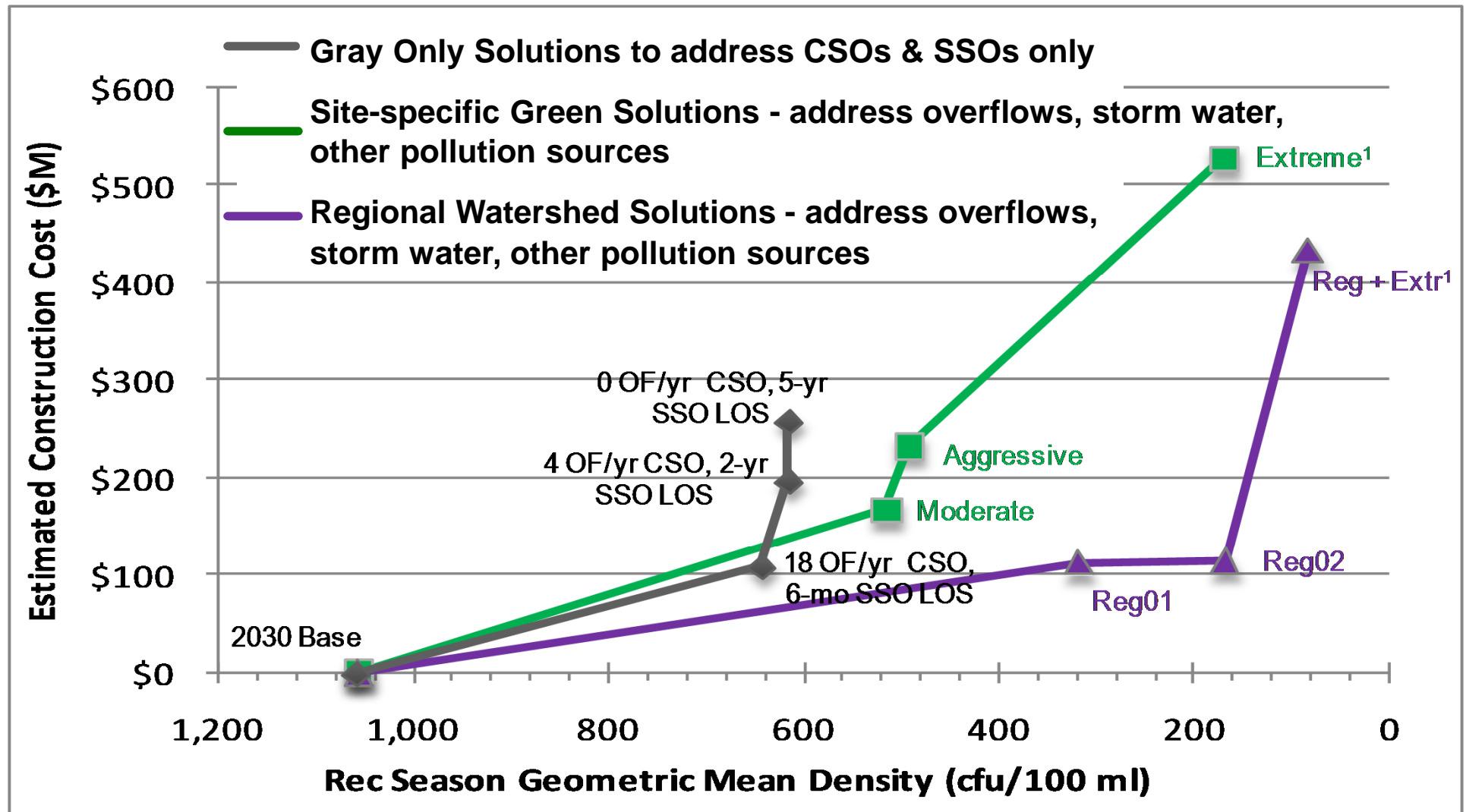
Traditional Gray Infrastructure Solution Costs



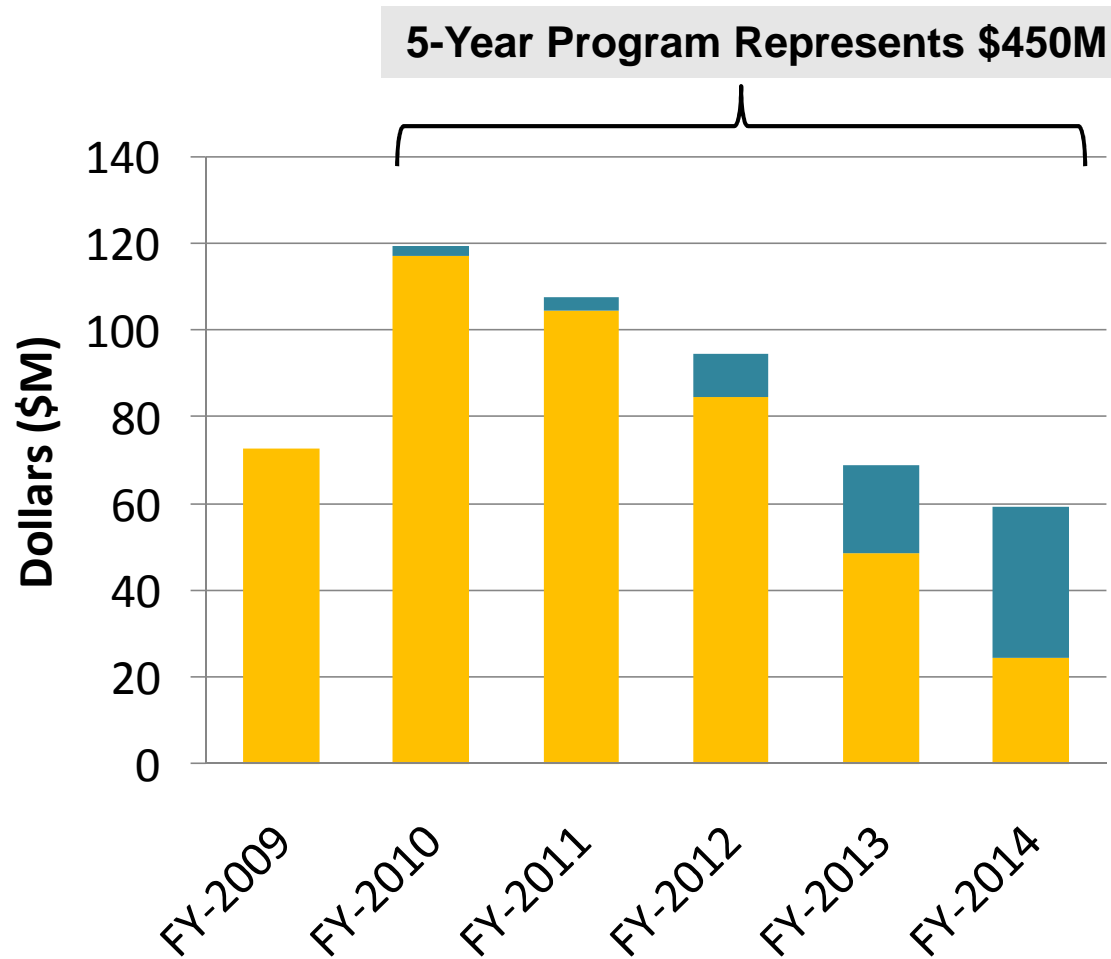
Monthly Bill Implications of Traditional Solution



Integrated solution shows value of watershed approach



Watershed Plan Program Costs



Approved rate adjustments:

- FY-10: 15%
- FY-11: 15%

Projected rate adjustments:

- FY-12: 15%
- FY-13: 15%
- FY-14: 15%



Projected System-wide Typical Year Overflow Reduction

Scenario	Approx. System-wide SSO Volume (MG)	Approx. System-wide CSO Volume (MG)
Current Condition	240 MG	1,870 MG
Implementation of Five-Year Improvement Program	135 MG	1,380 MG ¹
Total Reduction	105 MG (44%)	490 MG (26%)

¹ Includes benefits of River Water Intrusion Mitigation, Lakeside Park Sewer Rehab, and Church Street projects begun in five-year improvement program that will extend beyond the first five year period.



Current Status of Watershed Plans

EPA's Response:

- Overall, OK with 5-year plan
- Did not question affordability
- Submit a 20-year integrated green, gray, & watershed control approach even if unaffordable by Feb. 28, 2011



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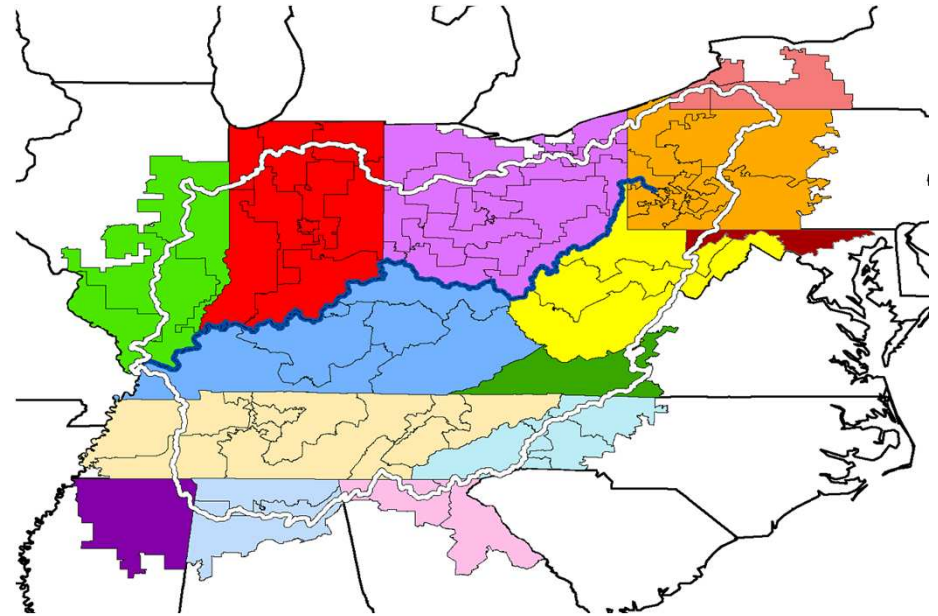
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Region 4

Ohio River Valley Water Sanitation Commission: Ohio River Congressional Caucus

- Bipartisan Caucus
- Watershed covers over 200,000 square miles
- Includes 55 Congressional districts in 14 states
- Major goal - to ensure support from Congress and the Administration for programs and projects essential to the watershed



NACWA Money Matters

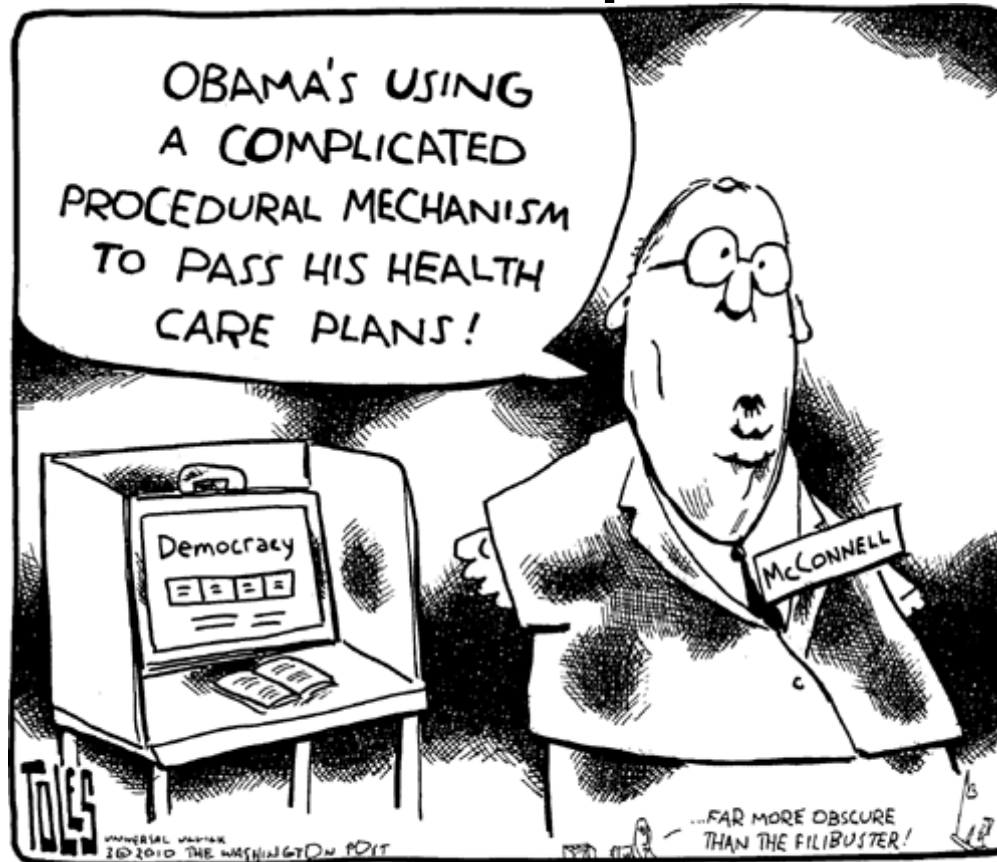
March on Washington



- March 1
- Visit congressional representation



Kentucky Congressional Representation

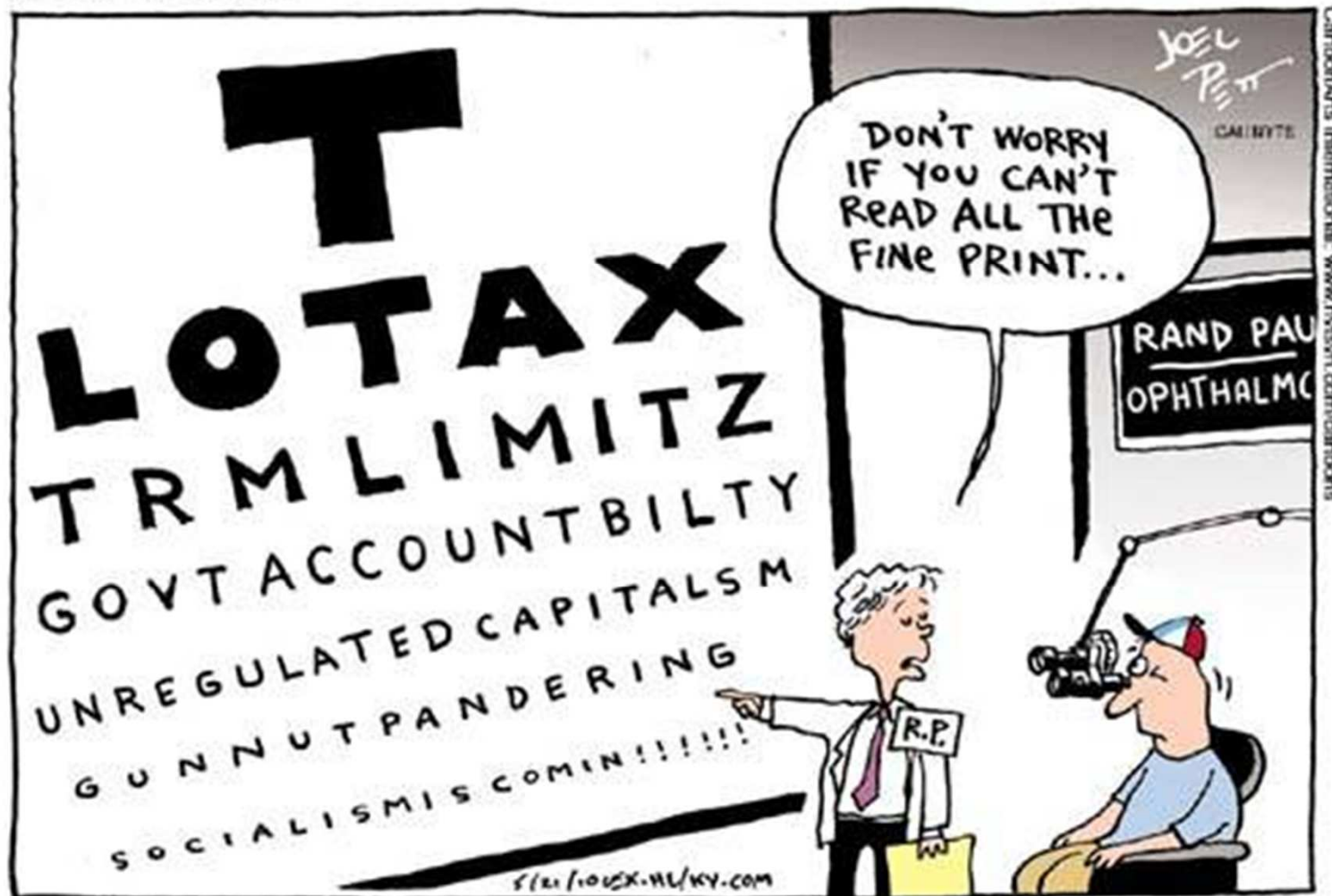


3-12-10



Kentucky Congressional Representation

JOEL PETT
LEXINGTON HERALD-LEADER





Preparing for Congressional Visits

- **Arrive on time; expect them to be late**
 - “No one important is ever present to appreciate punctuality.”
 - **Bring reading material:**
 - “My Senator & Me: A Dog’s Eye View of Washington, DC” by Ted Kennedy
 - “The Conscience of a Conservative” by Barry Goldwater
- **Do not adopt the Stephen Colbert technique for speaking to elected officials**
 - Do not ask “George W. Bush: great President, or *the greatest* President?”, or “the Iraq War: great war, or *the greatest* war?”
 - Do not force a serious discussion as to why you should not be allowed to marry a chicken under the principles of federalism
- **Learn about them (focus on the good things)**
- **Make it personal**
 - Develop case studies

Questions

