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COMMENTS

Comments on Proposed Intended Use Plans for the FFY2022/SFY2023 Clean Water State Revolving Fund ("CWSRF") and the Drinking Water State Revolving Fund ("DWSRF")

By email to: Paul Hauch, P.E., Bureau Chief Municipal Finance
and Construction Element Division of Water Quality

April 22, 2022

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Our comments and recommendations on the proposed CW and DW IUPs are organized into five sections:

1. Technical Assistance and Set Asides
2. Disadvantaged Community and Affordability Criteria
3. Allocation of Grants and Principal Forgiveness
4. New or Improved Performance-Oriented Goals and Provisions
5. Fully Addressing the New Commitment to Justice 40

They are informed by our joint Recommendations for the New Jersey Department of Environmental Protection Water Infrastructure Investment Plan (WIIP) that we submitted on February 18th together with Andy Kricun of the US Water Alliance and Larry Levine of NRDC. They are appended.

1. Technical Assistance and Set Asides

The proposed IUPs provide very little information about additions to the DEP technical assistance programs, which is understandable given how recently federal guidance arrived.

We support the general direction proposed by the DW IUP:

- "As part of the additional federal funds through the BIL, NJ intends to expand technical assistance (currently directed at small systems) to public water systems, including disadvantaged communities that meet NJ's Affordability Criteria in appendix 2."

We do NOT understand or support the general direction proposed in the CW IUP, page 27:

- "The Water Bank does not intend to use the technical assistance funds allowed under the FFY 2022 capitalization grants but reserves the right to utilize the unused funds at a later date."

We urge the department to provide more information on its approach to technical assistance as soon as possible.

We also urge the Department to advocate with Environmental Finance Centers (EFCs) in Region 2 (and perhaps in Region 3) to seek funds from the new EPA grant program to provide technical support to disadvantaged communities in New Jersey to help them develop and submit project proposals, including State Revolving Fund (SRF) applications for Bipartisan Infrastructure Law funding. We have observed that the Environmental Finance Center at Syracuse provides limited support to New Jersey communities, as compared with some of the other EFCs across the country.

We repeat our recommendations submitted on Feb. 18, which recommended creation by the Water Bank of a larger program that is designed to provide direct technical assistance (TA) to underserved communities in the form of individualized pre-development work with communities on preparing applications and managing awards. Please let us know if the Department is unlikely to face obstacles in hiring the new staff or consultants that will be needed to implement this work.

2. Disadvantaged Community and Affordability Criteria

We support the IUP's proposal to use a single, consistent definition of disadvantaged community (i.e., affordability criteria) for both the CW and DW programs. And we generally support the use of two criteria: 1) the community's median household income as a percentage of the state MHI; and 2) the use of the environmental justice "overburdened community" economic criterion as a tie-breaker.

However, we note that we have not had the opportunity to analyze how the latter would actually impact communities. Without this information, we are concerned that the shift from 65% to 80% of MHI as a threshold for accessing "affordability funds" for the DWSRF may "crowd out" or create too much competition for many of the state's neediest communities as they seek to access principal forgiveness (PF) funds. We hope that incorporation of the overburdened criteria in the priority ranking screen will prevent this from happening.

Our specific observations and related questions follow below.

2a. Drinking Water IUP

On the drinking water side, the number of communities able to access the funds set aside for disadvantaged communities increases from 38 communities in the SFY22 IUP to 102 in the proposed SFY23 IUP. This means there will be 64 more communities competing for the \$25m in funds for lead line replacement and the \$15m for "general BIL principal forgiveness." We have many related questions:

- It seems that the entire \$25m set aside for Lead Line Replacement could be used up by five communities, given the cap of \$5m each. Is this likely?
- How will the DEP ensure that the \$25m in funds go to the neediest communities, especially if some need additional technical assistance to apply or have credit rating constraints that would prevent them from applying?
- Will the rolling review process make this truly a program of first-come, first serve, or will the program provide ample time for all communities to apply before ranking applications?

2b. Clean Water IUP

Our concerns on the clean water side are a little different, as the proposed SFY23 affordability criteria are stricter than the SFY22 criteria. However, the way the criteria play out for CSOs is of great concern, as we elaborate in the next section.

3. Allocation of Grants and Principal Forgiveness

3a. Clean Water SRF

We generally support the following changes to the allocation of principal forgiveness (PF) under the CWSRF from SFY22 to SFY23:

- Reducing PF for Water Quality Restoration by \$13.5m.
- Increasing PF for CSOs by \$26m and allowing for a 100% PF share for communities that meet the affordability criteria.
- Creating a new “Affordability criteria” category with \$36m in funds and 100% PF, which creates opportunities and lowers barriers for underserved communities.

However, we have major concerns with the way CSO principal forgiveness programs are structured:

- There is no scaling of PF amounts based on the total cost of the CSO LTCP. Thus, a community with a small CSO cost, or even a small cost per capita, could access just as much funding as a community with a huge CSO cost or cost per capita. As just one example, consider the following—and please explain—why should North Bergen (for example) be able to access the same size grant as Perth Amboy (for example)?

| | <u>Total CSO LTCP Cost</u> | <u>Per Capita CSO LTCP Cost</u> |
|--------------|----------------------------|---------------------------------|
| Perth Amboy | \$289,000,000 | \$5,576 |
| North Bergen | \$30,800,000 | \$1,480 |

Therefore, we recommend creating three tiers of PF caps based on project size. For CSO projects, establish a range of per-project caps on grants or principal forgiveness, depending on the overall cost of the community’s CSO LTCP. (A more expensive LTCP would allow for a higher per-project cap.)

- Our analysis¹ suggests that the allocation of funds within the CSO categories is grossly inequitable. We found that the communities eligible for the CSO/affordability category have a combined LTCP cost that is 50% greater than those competing for the CSO PF in the regular CSO category. The first group has a much lower average median household income. This means that these more disadvantaged communities with a 50% larger combined need will be competing for the same amount of funds as the more affluent communities with a smaller combined need. This strikes us as grossly inequitable.

| | PF Funds available | Combined cost of LTCPs | Weighted Average Median HH income |
|---|--------------------|------------------------|-----------------------------------|
| Cities/regions eligible for "affordability" funds | \$30m | \$1,504m | \$43,399 |
| Cities not eligible | \$30m | \$1,021m | \$75,621 |

| Municipal or Utility Permit Holder | LTCP | | | CSO Volume | | | Demographics | | |
|------------------------------------|----------------------|------------------------------|-----|-----------------------------|-------------------------------|--|--------------------------------------|--|-----------------------------------|
| | Total plan cost HIGH | Group Total plan cost (High) | | Annual CSO volume (gallons) | Group total Annual CSO Volume | | Approximate population ⁿ² | Median household income (2015-2019) ^s | Weighted average median HH income |
| Camden | \$141,088,000 | | | 607,000,000 | | | 74,608 | \$27,015 | |
| Newark | \$99,400,000 | | | 1,319,000,000 | | | 280,463 | \$35,199 | |
| Paterson | \$125,800,000 | | | 353,000,000 | | | 145,800 | \$41,360 | |
| Elizabeth | \$190,920,000 | | | 866,000,000 | | | 128,153 | \$48,407 | |
| Perth Amboy | \$289,000,000 | | | 386,000,000 | | | 51,832 | \$52,563 | |
| Gloucester | \$47,149,000 | | | 76,000,000 | | | 11,246 | \$59,394 | |
| Guttenberg | \$26,060,000 | | | 25,000,000 | | | 11,436 | \$62,450 | |
| North Bergen | \$30,800,000 | | | 274,000,000 | | | 46,945 | \$63,908 | |
| Bayonne | \$279,400,000 | | | 747,000,000 | | | 65,300 | \$63,947 | \$43,399 |
| PVSC** | \$273,900,000 | \$1,503,517,000 | 60% | - | 4,653,000,000 | | - | - | |
| Above/Below 80% MHI (\$66,036) | | | | | | | | | |

¹ Our full spreadsheets with notes are being submitted as a separate document. We used the best information we could find, which may be out-of-date. We welcome comments and questions on the figures we used, which were derived from draft LTCPs, and on our analysis.

| | | | | | | | | | |
|---|------------------------|-----------------|-----|----------------------|---------------|--|------------------|---------------------------|----------|
| Harrison | \$16,500,000 | | | 47,000,000 | | | 16,180 | \$69,604 | |
| Hackensack | \$127,700,000 | | | 257,000,000 | | | 44,381 | \$70,090 | |
| Kearny | \$69,900,000 | | | 255,000,000 | | | 41,567 | \$70,702 | |
| Jersey City | \$372,400,000 | | | 1,557,000,000 | | | 261,746 | \$70,752 | |
| NHSA | \$307,300,000 | | | 597,000,000 | | | 188,377 | \$82,915 | |
| Fort Lee | \$18,200,000 | | | 162,000,000 | | | 36,990 | \$83,767 | |
| Ridgefield Park | \$15,150,000 | | | 53,000,000 | | | 12,934 | \$86,923 | \$75,621 |
| Camden County Municipal Utilities Authority | \$87,506,500 | | | 140,000,000 | | | - | - | |
| East Newark | \$6,000,000 | \$1,020,656,500 | 40% | 17,000,000 | 3,085,000,000 | | 2,665 | - | |
| TOTAL | \$2,524,173,500 | | | 7,738,000,000 | | | 1,420,623 | (avg.) \$66,346 | |

This leads us to ask: What is an equitable allocation of principal forgiveness funds for CSO abatement for disadvantaged communities?

- The *floor* would be to allocate PF commensurate with disadvantaged communities' share of total combined LTCP costs at 60% of total PF funds or \$36m.
- The *ceiling* would be to allocate 100% of CSO PF funds or \$60m to disadvantaged communities, in line with the DWSRF allocation of 100% of PF for lead pipe replacement to disadvantaged communities.
- A *middle ground* would be to allocate 80% of CSO PF funds or \$48m to disadvantaged communities, which recognizes both their share of statewide LTCP costs and their lower MHI.

We recommend that the \$60m of CSO abatement PF funds be allocated as follows:

- \$48m for disadvantaged communities
- \$12m for other communities, with no more than 50% of project cost forgiven as PF

To maintain leveraging of funds, we recommend that the DEP reduce the percentage of project cost that can be forgiven for disadvantaged communities to somewhere between 60-75%.

3b. Drinking Water SRF

We generally support the allocation of funds among categories for the DWSRF.

Inadequate amount of funding. At the same time, we note the paucity of funds for lead pipe replacement relative to the need and the huge (75%) reduction from last year. The Department should acknowledge this publicly to build the case for allocations of additional state resources by the governor and the Legislature.

| | <u>SFY22</u> | <u>SFY23 (proposed)</u> |
|------------------------------------|------------------|-------------------------|
| PF funds for lead line replacement | \$100m (approx.) | \$25m |

No scaling of funding relative to # of LSLs scale. Unlike in the SFY22 IUP, there is no scaling of PF amounts based on a factor such as project size. Thus, a community with a small lead pipe replacement cost, or even a small cost per capita, could access just as much funding as a community with a huge lead pipe replacement cost or cost per capita. Therefore, we recommend reinstating three tiers of PF caps based on the number of LSLs in a community. If the DEP plans to reinstate such a tiered system after the next set of LSL inventories are submitted, it should make that commitment public, which would serve as an incentive for communities to advance their LSL inventories.

No exception to the requirement for a 50% loan share. We generally support the leveraging of PF funds to the greatest extent possible. However, we are aware that in a few cities like Trenton, borrowing is not currently an option for unfortunate political reasons. Meanwhile, the low-income residents of Trenton are more likely to receive drinking water through lead pipes than in most other communities. We call on the DEP to fashion a temporary fix to this situation for Trenton and perhaps a handful of other communities whether through the SFY23 IUP or some other means.

Need to prohibit use of a customer cost share. Communities receiving funds for LSL replacement should not be allowed to impose a property-owner cost-share. As highlighted by a Title VI complaint filed with EPA concerning a lead service line replacement program in Rhode Island, property-owner cost shares disproportionately exclude low-income households and people of color. (See <http://blogs.edf.org/health/2022/01/07/civil-rights-complaint-draws-attention-to-the-discriminatory-impacts-of-common-lead-pipe-replacement-practice/>) The City of Newark learned that removing the customer cost share lowered costs by 13% through greater efficiency of operations, which more than made up for the lost revenue. The state of Michigan prohibits use of a customer cost share through legislation. There is no reason why this cannot be a condition of funding through the DW IUP.

4. New or Improved Performance-Oriented Goals and Provisions

Climate Resilience

We commend:

- The addition of new short term goals for climate resilience in both the CW and DW IUPs.
- The addition of climate resilience as an eligible use in both the CW and DW IUPs.

We hope that the new IUPs address the fact that an inordinate number of stormwater and nonpoint source pollution projects languish at the bottom 25% of the priority list, but our (admittedly) cursory review of the priority ranking scheme did not indicate that this is the case.

Green Infrastructure

We commend the increase in funding set aside in both CSO Abatement categories of \$5m for CSO Green Infrastructure projects, which creates a total Green Infrastructure set aside of \$10m or 17%. This is a four-fold increase from the \$2.5m set aside in the SFY22 CW IUP.

Justice 40

- We commend the addition of a new short-term goal in both IUPs to provide financial incentives and technical assistance to disadvantaged communities with the goal of meeting Justice 40.
- We commend provisions in the CW IUP that allow for lending to project sponsors that do not satisfy the IBank credit policy but are under State Financial Supervision. We ask whether this could be extended to the DW IUP.
- We commend the waiver of DEP fee or the PF portion of CSO/Affordability Loans. We ask whether this could be extended to the DW IUP.

5. Fully Addressing the New Commitment to Justice 40

Engaging impacted communities to shape the IUPs. We recommend the DEP make every effort to get feedback from community-based organizations in marginalized frontline communities in order to understand and apply their knowledge and insights about how the IUPs will affect their opportunities to benefit from the funding.

For this reason, we offer a caveat on our own comments. We cannot claim to know the “best” answers on questions related to equitable allocation of funds (for example, the disadvantaged community/affordability criteria and allocation of principal forgiveness), without those communities having a voice directly. Our recommendations on these issues draw on concerns we’ve heard raised by diverse groups around the country who are grappling with these same issues in other states, as well as on our understanding of the situation in NJ. But we have not vetted our comments directly with impacted communities to solicit their input.

Ensuring every disadvantaged community benefits from NJ’s SRF programs. We commend the addition of a new short-term goal in the IUPs to provide financial incentives and technical assistance to disadvantaged communities with the goal of meeting Justice 40. But achieving the nation’s new Justice 40 commitment means looking not just at whether 40% of funds go to disadvantaged communities.

Achieving Justice 40 means working to ensure that every disadvantaged community is fully participating in, and benefiting from, New Jersey’s successful SRF programs, now enhanced by \$1 billion in federal spending, to advance public health, safety and environmental justice across the state.

The DEP must complement its one-year IUPs with a five-year Justice 40 water financing policy framework to clearly articulate measurable goals, strategies, actions, and progress achieved. This effort must start by identifying the communities in need, which as we explain below, goes beyond a measurement of their financial status.

To more fully explain our proposal, we are including below (in italics) the explanation from our February 18, 2022 comments.

However, there is a group of communities that have not historically applied for I-Bank funding. This may be due to either lack of resources, lack of political will to address infrastructure problems now as opposed to leaving them for successors to address, or other reasons. Regardless, since our mission is to ensure clean waterways and safe drinking water for all residents of NJ, no matter where they live, a proactive approach is needed to identify communities with the most serious drinking water and clean water challenges and then to do our utmost to assist them.

Therefore, we recommend that, in addition to the current practice of reviewing all applications for funding that are received, a parallel effort be undertaken to proactively identify key water-related projects in disadvantaged communities and to provide the assistance necessary to move them forward. The program would involve the NJDEP:

- *identifying the most serious drinking water and quality issues in the state that have long remained unaddressed;*
- *working with those communities to identify corresponding solutions;*
- *providing assistance to those communities to help them through the planning, design, permitting and application processes needed before SRF construction funding can be awarded; and*
- *tracking progress to learn about any potential obstacles or issues on the part of applicants and/or the Water Bank program*

The current passive approach will not address public health and water quality issues in all low income/EJ communities, as it is unlikely to provide the kind of assistance that is needed in low income and low resource communities. If the State is truly serious about the notion that a person's zip code should not determine whether or not they have safe drinking water or clean waterways, then it must take the aforementioned proactive approach.

Project readiness is also essential, however. Setting aside too much funding for low resource communities that are not ready to proceed would be inefficient. A balancing act is needed between these two competing considerations --- providing low income households with a fair chance at funding support while also ensuring that funds do not languish.

This paradigm shift to proactive identification, assistance, and funding of the most impactful projects would not only help to ensure that the additional funding will be used where it is needed most but would also have the ongoing benefit for the SRF program thereafter as well. A primary goal of the NJ WIIP should be to ensure reliable, affordable water, wastewater and stormwater services that support water quality and public health in every community.

The five-year duration of the additional injection of SRF funding allows for more time to identify "shovel worthy" projects in underserved communities, and take them through the planning, design, permitting

and application process. We suggest that the first two years be devoted primarily to funding "shovel ready" projects while working in parallel in disadvantaged communities to get their set of "shovel worthy projects" through the application process so that they can join the roster of funded projects during the last three years.

The NJDEP could consider creating an advisory council of interested stakeholders, to assist with this work, particularly in the identification of high priority challenges and corresponding solutions. The stakeholders could include groups like the NJ Environmental Justice Advisory Council and others.

Specifically, we recommend:

- 1. The Water Bank should identify "at risk" "low-resource" systems that have some combination of the following.*
 - Consent decrees, consent orders, or compliance schedules in permits*
 - Historic pattern of violations*
 - Compliance obligations (CSO, LSL, identified PFAs, etc.) that are significant relative to size of rate base and its capacity to absorb rate increases*
 - Low-income rate base, perhaps defined by status as a disadvantaged community*
- 2. Assuming that it takes 12-18 months to go through the planning, design, permitting and application processes, the NJ Water Bank should consider a two-pronged approach such that:*
 - The first two years of the SRF cycle focus on projects that are far enough along in the project development pipeline – or can be accelerated through the pipeline – to meet the state's deadlines for obligation and/or expenditure of the initial tranches of federal funds. We recommend grants to nonprofit organizations that work with environmental justice communities in New Jersey on water issues. Their efforts, like the [Funding Navigator](#), and technical nonprofit partners like Moonshot Missions, can play a critical role in working with communities to identify important capital projects and help them submit a concept application to the Water Bank's H2O Loans. At that point, Water Bank technical assistance on-call augmentation consultants and staff can take over.*
 - The remaining three years of the SRF cycle focus on "shovel worthiness" with a goal of bringing the most important projects, from a public health, water quality and social justice perspective through the pre-construction phases of planning, design, permitting and application during the first two years in parallel with the implementation of the aforementioned shovel ready projects. We recommend that the Clean Water "Environmental Justice Affordability" and "General BIL Principal Forgiveness" allocations be available only to the high-risk/low-resource communities as defined above. DEP officials would meet with mayors and the public in high-risk/low-resource communities to explain the opportunity and deadlines for applications. They would prioritize these*

communities for Technical Assistance (see below). We also recommend that the Water Bank publish annual progress of at-risk systems in obtaining financing.

In summary, the WIIP would provide environmental justice set-asides in the first two years, but only for those projects that are shovel-ready or could be soon. And, in the final three years, there would be a much higher percentage of financing going to environmental justice/low income communities under the assumption that they would get the help they need within the first two years of the five-year cycle to be ready by years 3-5. If a system can't meet deadlines, in spite of getting all of the help they need (i.e., not willing to proceed even with the necessary help and resources), then the set-asides could be re-evaluated and released on an annual basis.

Thank you very much for your consideration. Please do not hesitate to contact me if you have any questions or for more information.

Attachments

- Recommendations for the New Jersey Department of Environmental Protection Water Infrastructure Investment Plan (WIIP) submitted on February 18th jointly by Chris Sturm, New Jersey Future; Andy Kricun, US Water Alliance; and Larry Levine, NRDC.
- A spreadsheet ranking NJ municipalities by income and poverty levels.
- A spreadsheet on CSO costs, where tabs three and four break them into groups based on their eligibility for "CSO Abatement/Affordability".