



## Comments on The Use of \$300 Million in American Rescue Plan Funds in the Water Infrastructure Investment Plan (WIIP)

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**Memo to:** NJDEP WIIP Team

**From:** Diane Schrauth, New Jersey Future and Larry Levine, Natural Resources Defense Council

**Date:** August 19, 2022

**Subject:** Comments on the Use of \$300 Million in American Rescue Plan Funds in the Water Infrastructure Investment Plan (WIIP)

The \$300 million in federal American Rescue Plan (ARP) funding in the FY23 state budget will add to the state's transformative investments in critical water infrastructure over the next five years. We commend the New Jersey Department of Environmental Protection (NJDEP) for its thoughtful approach to prioritizing funds for overburdened communities and addressing public health needs, as described in the August 17, 2022 stakeholder session. We have several additional recommendations for the use of these funds outlined below.

### Funding Distribution

As you know, the ARP funding has timing constraints and must be obligated<sup>1</sup> by December 31, 2024, and expended by December 31, 2026. We support the emphasis on quickly moving this money out to communities for transformative water infrastructure projects. However, there is often tension between project readiness and the urgent public health needs of overburdened communities. And the ARP funds provide a level of flexibility not typically available through other pots of federal and state funding. To this end, we recommend the following:

- Consider providing the option for communities to access the ARP funds as grants rather than principal forgiveness. We welcome NJDEP's intent to prioritize the use of ARP funds for assistance that need not be repaid. In the stakeholder session, this form of assistance was described as principal forgiveness (PF). However, as noted by commenters on the proposed FY 2023 State Revolving Fund (SRF) Intended Use Plans (IUPs), grant funds can be more accessible for overburdened communities that might not have the capacity to take on debt, even on a temporary (and forgivable) basis, as required for PF. Although NJDEP declined to offer grants through the SRFs under the final FY 2023 SRF IUPs, New Jersey has previously allocated ARP funds as

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<sup>1</sup> For funds to be obligated, they must not only be "committed" to particular projects or recipients, but rather there must be formal "...orders placed for property and services, contracts, and subawards made and similar transactions," as referenced in 2 CFR § 200.71.

grants for water and sewer infrastructure under the FY 2022 budget, creating a precedent to do so again with the \$300 million in ARP funds provided for water infrastructure under the FY 2023 budget.<sup>2</sup> Many other states also offer ARP funds as grants for water and wastewater infrastructure, including some states with grant programs in the hundreds of millions of dollars.<sup>3</sup>

- Provide up to \$25 million in planning and design funding. Overburdened communities often need planning and design support to develop “shovel worthy” projects. Planning and design grants help communities assess which problems to tackle, develop projects, involve the community, and submit applications for financial assistance. Allowing ARP funds to be used for planning now will ensure that low-resource, high-need communities will be able to access the funds available under the Bipartisan Infrastructure Law in future years through the SRF program.
- Within the time constraints of the ARP funding, consider projects that are ready (or could quickly be made ready) but have not sought funding through the SRF process. Different rules that NJDEP may adopt for ARP funding—such as making funds available as grants, as suggested above, or higher (or no) caps on per-project funding, as suggested by NJDEP in the stakeholder session—could be more attractive than the SRF program’s offerings to some overburdened communities that have been hesitant to apply to the SRFs.
- In addition to the priority project types that NJDEP identified in the stakeholder session, consider investing a portion of the ARP funds to replace lead service lines (LSLs). While the federal Bipartisan Infrastructure Law provides \$241 million over five years for LSL replacement, that is less than 10% of the projected statewide need, and the \$25 million in PF furnished in FY23 pales in comparison to the existing demand from fiscally-distressed water utilities that are not in a position to assume more debt. Dedicating even \$25 million in ARP funds for LSL replacement as PF (or, at the recipient’s option, as grants) would double the current availability of PF and jumpstart efforts to comply with the statutorily-mandated 10 year replacement timeline.

## Technical Assistance

As noted in comments we submitted previously on the FY 2023 SRF IUPs, some communities have not historically applied for Water Bank funding, either due to lack of resources, political will or other reasons.<sup>4</sup> At the August 17, 2022 stakeholder session, we were encouraged to hear NJDEP is considering a more proactive approach to working with underserved communities through technical assistance (TA). We look forward to learning more about those plans. We also offer the following recommendations regarding TA:

- Consider allocating up to \$5 million in ARP funds for TA with the SRF application process.

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<sup>2</sup> For example, the FY22 budget (P.L. 2021, c. 133) included \$10 million for sewer disconnection in Camden, \$10.5 million for water and sewer pipes and pump stations in Fort Monmouth, and \$2 million for water line relining in Milltown. These funds were administered as grants from the Department of Community Affairs. See Governor’s Disaster Recovery Office, Financial Table, COVID-19 State Funding

<https://gdro.nj.gov/tp/en/financial-analysis/table-view/state?sortColumn=agency&sortValue=asc&pageSize=15&pageOffset=0&keyword=sewer&lang=en> and

<https://gdro.nj.gov/tp/en/financial-analysis/table-view/state?sortColumn=agency&sortValue=asc&pageSize=15&pageOffset=0&keyword=water%20line&lang=en>.

<sup>3</sup> Many examples are available by selecting the “water infrastructure” category in an online tracking tool maintained by the National Council of State Legislatures (NCSL). NCSL, “ARPA State Fiscal Recovery Fund Allocations”:

<https://app.powerbi.com/view?r=eyJrjoiMmQ2NDRiNDYtN2NkZC00OTE2LThjYzQtYjAzNTE2ZDRjZWFiIiwidCI6IjM4MmZiOGIwLTRkYzYzNDEwNy04MGJkLTM1OTViMjQzMmZhZSIiImMiOjZ9&pageName=ReportSection&pageName=ReportSection>.

<sup>4</sup> Recommendations on the NJDEP WIIP dated February 18, 2022:

<https://www.njfuture.org/wp-content/uploads/2022/02/Submitted-Comments-2.22.22.pdf>.

- Be proactive in identifying, recruiting, and providing TA to disadvantaged communities to develop shovel-worthy projects that can use ARP funding.
- Provide communities with access to qualified consultants with successful experience in navigating the Water Bank application process.
- Ensure that TA is available in every phase of the application process. Utilities in underserved communities often need help assessing problems, building capacity, planning and designing projects, and managing awards.
- Support other sources of technical assistance beyond NJDEP and the Infrastructure Bank, including nonprofit partners who have trusted relationships with local water systems, community leaders, and community organizations. For example, New Jersey Future is establishing a Funding Navigator program in partnership with nationally recognized nonprofits and philanthropic funders. Moonshot Missions supports peer-to-peer initiatives in the water sector that includes access to funding programs.

### **Scale Financial Assistance to Recognize Relative Needs**

As NJDEP evaluates the financial need of overburdened communities, we encourage the Department to consider the overall cost burden to low-income households within a community, accounting for rate increases that would be needed to cover debt service if a project were funded through loans. New Jersey Future offered some examples in its comments on the proposed SRF IUPs for FY23 from April 22, 2022.<sup>5</sup>

#### **Justice 40:**

As noted in prior comments, we continue to encourage NJDEP to directly engage impacted communities to shape the use of ARP funding under the amended IUPs that the agency is developing. We recommend that NJDEP make every effort to get feedback directly from community-based organizations in overburdened communities in order to understand and apply their knowledge and insights on the important water infrastructure projects in their locality.

In addition, we continue to encourage NJDEP to ensure that every disadvantaged community is fully participating in and benefitting from New Jersey's SRF program, in coordination with the additional \$300 million in ARP funding, to advance public health and environmental justice across the state.

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<sup>5</sup> Comments on Proposed IUPs for FY 2023 dated April 22, 2022:

<https://www.njfuture.org/wp-content/uploads/2022/04/Comments-on-NJ-CW-DW-IUP-New-Jersey-Future-4-22-22.pdf>.