



16 W. Lafayette St.  
Trenton, NJ 08608  
p: (609) 393-0008  
f: (609) 360-8478  
w: njfuture.org

COMMENTS

## Comments on Amendments to the Final Clean Water and Drinking Water Intended Use Plans Federal Fiscal Year 2022 State Fiscal Year 2023

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

**October 3, 2022**

**Contact:** [Diane Schrauth](#), 609-393-0008

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. We commend the New Jersey Department of Environmental Protection (NJDEP) for the proposed amendments to the Intended Use Plans (IUPs) prioritizing funds for overburdened communities and addressing public health needs. We also recognize that New Jersey's water infrastructure needs exceed the funding available and have the following comments and recommendations informed by [Comments on the Use of \\$300 Million in American Rescue Plan Funds in the Water Infrastructure Investment Plan \(WIIP\)](#) that we submitted on August 19, 2022 with Larry Levine of the Natural Resources Defense Council (NRDC) as well as previously submitted comments on [April 22, 2022](#) and [February 18, 2022](#). All prior comments are appended 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. The ARP funds provide a level of flexibility not typically available through other federal and state funding sources. To this end, we repeat our recommendations submitted on August 19, as outlined below:

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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.

- Provide the option for communities to access the ARP funds as grants rather than principal forgiveness. We welcome NJDEP prioritizing the use of ARP funds for assistance that need not be repaid. However, 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 principal forgiveness (PF).
- Provide funding for planning and design. Overburdened communities often need upfront 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 ultimately submit applications to the Water Bank. 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 in the August 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.

### **Technical Assistance**

The proposed amendments to the IUP do not provide information about technical assistance programs to help localities that have not historically applied for Water Bank funding. We understand that NJDEP will be sharing information on its program in upcoming stakeholder sessions. As outlined in prior comments submitted on February 18, April 22, and August 19, we continue to be concerned that the State Revolving Funds operate largely on a “first come, first served” basis. For both drinking water and clean water needs, a stronger commitment is needed to assist overburdened communities, which may be facing multiple environmental challenges, in fully participating in the program. As an example, the September 14, 2022 public hearing on the amended IUPs was generally poorly attended, especially by overburdened communities, reflecting the need for additional support to ensure that localities are aware of and accessing the available funding. While the FY23 IUP references planned improvements in technical assistance, it does not provide a detailed description, and it is difficult to see how a modest set of measures will influence long-standing concerns in a meaningful way.

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

As NJDEP evaluates the financial need of overburdened communities, the Department should consider scaling SRF assistance by taking into account localities' relative environmental challenges, fiscal distress, and the potential burden projected per ratepayer. New Jersey Future offered some specific examples on pages 3 - 4 in its comments on the proposed SRF IUPs for FY23 from April 22, 2022, appended below.

### **Justice 40:**

As noted in prior comments, we commend the goal in the IUP to provide financial incentives and technical assistance to overburdened communities with the goal of meeting Justice 40. Achieving Justice 40 means working to ensure that every disadvantaged community is fully participating in and benefiting from New Jersey's SRF program. In addition, we continue to encourage NJDEP to directly engage impacted communities to shape the use of ARP funding. 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.

## **Clean Water State Revolving Fund**

Below are some specific recommendations and comments regarding the proposed amendments to the Final Clean Water Intended Use Plan:

- We support the overall approach allocating ARP funds for overburdened communities and principal forgiveness loans for Combined Sewer Overflow (CSO) projects. We also strongly recommend that NJDEP release the draft CSO permits. We understand that CSO projects are eligible for IUP funding; however, without permit approvals, some regulated entities may be hesitant to apply for and expend the allocated ARP funds by the January 31, 2026, deadline.
- The proposed transfer of \$3.8 million from the allocation from the CWSRF to the DWSRF to address emerging contaminants in drinking water is a positive step and is fully supported.
- The Clean Water IUP assumes the use of \$357 million in funds available from prior years and \$110 million in loan repayments, which is the same amount budgeted in FY22. It is not clear if these figures are the maximum amount that could be considered. NJDEP should clarify how much more was not allocated to the FY23 CWSRF program.

## **Drinking Water State Revolving Fund**

Below are some specific recommendations and comments regarding the proposed amendments to the Final Drinking Water Intended Use Plan:

- We were disappointed that NJDEP elected not to allocate any of the \$300 million in additional federal funds provided under the American Rescue Plan to replace lead services lines, despite a total projected costs of at least \$2.3 billion and a ten year statutory deadline for action. Given the number of fiscally distressed water systems across the state with lead service lines, it would be helpful to understand the Department's funding strategy for this important program.
- Completing a lead service line inventory is a critical path item to ensure progress in addressing lead in drinking water, yet many water systems in New Jersey have considerable work to do to reach that goal. Given the magnitude of the cost of replacing lead service lines, it would be helpful to understand how NJDEP plans to use the SRF to provide assistance for lead service line inventories, particularly for water utilities in overburdened communities that face significant lead exposure.
- The final IUP projects that "...carryover principal forgiveness authority from prior grants, DWSRF repayments, state match, and other sources..." will be added to the FY23 SRF program. It is not clear if the \$5 million in "unallocated principal forgiveness or grant-like funding carried over at the end of SFY 2022" is the maximum amount that was unused in prior years. NJDEP should clarify how much more was not allocated to the FY23 DWSRF program.
- The proposed program assumes the use of \$38 million in loan repayments, the same amount budgeted in DWSFY22. It would be helpful to understand if that is the maximum amount that can be programmed or if there is a restriction on budgeting a potentially higher amount.
- Of the \$60 million in state appropriation to the DWSRF in FY23, the final IUP indicates that \$10 million is required to provide the state match. It would be helpful for NJDEP to clarify how the remaining \$50 million is reflected in the Sources and Uses chart that appears on page 25 of the amended IUP. Please also explain the sentence in the DWSRF IUP that reads: "*Note that additional State budget appropriations may be used for supplemental loans and grants for infrastructure that may not be SRF eligible.*"

## Previously Submitted Comments Amended Below

*New Jersey Future and Natural Resources Defense Council, August 19, 2022*

**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>2</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 grants for water and sewer infrastructure

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<sup>2</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.

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>3</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>4</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.

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<sup>3</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?sortBy=agency&sortValue=asc&pageSize=15&pageOffset=0&keyword=sewer&lang=en> and <https://gdro.nj.gov/tp/en/financial-analysis/table-view/state?sortBy=agency&sortValue=asc&pageSize=15&pageOffset=0&keyword=water%20line&lang=en>.

<sup>4</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=eyJrjoiMmQ2NDRIbDYtN2NkZC00OTE2LThjYzQtYjAzNTE2ZDRjZWFilewidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9&pageName=ReportSection&pageName=ReportSection>.

## 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>5</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.
- 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>6</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

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<sup>5</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>.

<sup>6</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>.

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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## 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**

**Contact:** [Chris Sturm](#), 609-393-0008,x114

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 analysis<sup>7</sup> 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 <sup>2</sup>	Median household income (2015-2019) <sup>5</sup>	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	-	-
<i>Above/Below 80% MHI (\$66,036)</i>							
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	

<sup>7</sup> 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.

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	-	
<b>TOTAL</b>	<b>\$2,524,173,500</b>			<b>7,738,000,000</b>			<b>1,420,623</b>	<b>\$66,346</b> (avg.)	

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-im-pacts-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".

*New Jersey Future, US Water Alliance, and Natural Resources Defense Council, February 18, 2022*

**Memo to:** NJDEP WIIP Team  
**From:** Andy Kricun, U.S. Water Alliance; Larry Levine, Natural Resources Defense Council; Chris Sturm, New Jersey Future  
**CC:** Gary Brune, Diane Schrauth, New Jersey Future  
**Date:** February 18, 2022  
**Subject:** Recommendations for the New Jersey Department of Environmental Protection Water Infrastructure Investment Plan (WIIP)

Our recommendations fall into seven categories:

1. Shifting Beyond “First-Come, First-Serve”
2. Technical Assistance and Set Asides
3. Disadvantaged Community and Affordability Criteria
4. Allocation of Principal Forgiveness
5. New Performance-Oriented Eligibility Requirements
6. Communicating Funding Gaps and Solutions
7. Complementary Grant Programs

**1. Shifting Beyond “First-Come, First-Serve”**

The work of the NJ Department of Environmental Protection and NJ Infrastructure Bank to distribute funding for water infrastructure in NJ has been transformational in promoting safe drinking water and clean waterways in our state. And, with the new, additional, infrastructure funding now available from the Federal government, the DEP and I-Bank are working to make these funding programs even more attractive to prospective borrowers.

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.

## 2. Technical Assistance and Set Asides

We recommend 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. Technical assistance reduces the burden that communities must shoulder in the entire process, from envisioning a project to securing funding to managing the funds. Proactive TA can ensure that the IJA infusion of funds into SRF programs is distributed equitably and delivers the highest quality projects—providing cost-efficient, sustainable solutions to pressing water infrastructure needs that would otherwise remain unaddressed. We recommend the NJ Water Bank’s TA program follow the principles below<sup>8</sup>:

1. **Be proactive in identifying, recruiting, and providing technical assistance to disadvantaged communities to procure applications for shovel-worthy projects.** Given the technical expertise, time, and costs required to prepare applications, passive reliance on submissions of “shovel-ready” projects often yields a disproportionately wealthy applicant pool and hinders the equitable distribution of SRF awards. States’ identification and recruitment of communities in need of technical assistance should aim to ensure better outcomes in terms of (1) more equitable distribution of SRF awards and (2) better projects. Without proactive efforts and targeted outreach, the neediest communities—with limited capacity to even bring their needs to the table—will be left out. Moreover, without proactive efforts, the scope, type, and sustainability of projects will be limited.
2. **Technical assistance should address every phase of the SRF process.** Utilities in underserved communities need help assessing problems, building internal capacity, gathering community input, planning and designing projects, and receiving and managing awards. The Water Bank should fund TA efforts to assist disadvantaged and EJ communities in all stages of the process.
3. **Provide communities with access to consultants** with successful experience in navigating the Water Bank application process. Program “augmentation” has long been used by state transportation agencies who engage consultants to complete specific tasks. In this instance, we recommend that the DEP craft a scope of work for the consultants and then deploy the I-Bank’s existing augmentation team of five qualified engineering firms. It’s critical to note that municipalities that may be unwilling to work with consultants hired by a regulatory agency for fear of compliance issues coming up, would likely be comfortable with consultants hired by a financing agency.
4. **Include grants to disadvantaged and EJ communities for planning and design.** Planning grants can help communities assess which problems to tackle, develop projects, involve the community in the decision-making, complete paperwork, and submit applications. While these expenses can probably not be reimbursed from an SRF loan, they are critical for the equitable distribution of SRF funds. Utilities that do not have sufficient revenue to fund planning and designing work

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<sup>8</sup> Drawn in part from a forthcoming sign-on letter to the EPA circulated by the NRDC.

need grants to cover the costs. With sufficient funding, communities can plan projects that are climate-resilient and reflect the needs of the community.

5. **Support pre-development expenses through loans and third-party loan guarantees.** Securing an SRF loan requires several technical documents, such as a preliminary engineering report and environmental review, which can cost thousands of dollars to complete. If pre-development funds are not available, applicants must cover these costs up-front, since the Water Bank does not reimburse for planning and design expenses until the construction phase is awarded. This cash flow challenge impedes progress even in cases where the costs are forgiven or reimbursed after construction is initiated. Many consulting engineers delay billing for these pre-development expenses until the SRF award is issued, but this practice favors well-resourced communities who engender confidence that an ultimate SRF award will be obtained. Current pre-development loans to address these needs can be limited or hard to obtain. Third party intermediaries could reduce the inefficiencies of state-issued pre-development loans by privately providing small pre-development loans to disadvantaged and EJ communities, but only if SRF awards will reimburse the loan expenses.
6. **Support the development of natural or green infrastructure projects.** Many communities may not have the knowledge, resources or capacity to identify and apply for funds to support green infrastructure and climate resiliency projects. The Water Bank should provide technical assistance to communities to help identify applicable green projects and support applications for funds, and to incentivize state programs to identify new priority projects and assist smaller and underserved entities in applying for SRF to finance natural or green infrastructure projects.
7. **Provide adequate funding for TA.** For both the Drinking Water SRF and Clean Water SRF, federal statutes allow states to use up to 4 percent of their annual capitalization grant for program administration and technical assistance. States may also use an additional 2 percent of their DWSRF capitalization grant for technical assistance to systems serving fewer than 10,000 people.<sup>9</sup> In addition, states can set aside up to 10 percent of their DWSRF capitalization grant for public water system supervision (PWSS) programs or to develop and implement a capacity development strategy. Through PWSS and capacity development, New Jersey can provide technical assistance to small and disadvantaged communities for engineering, needs assessments, and asset planning, among others.

In addition, the state of New Jersey should use a portion of its American Rescue Plan (ARP) funds for this purpose. As one potential fund source, an appropriation of \$5 million of ARP funds for Local Government Infrastructure Planning included in the FY2022 Appropriations Act could be used to support technical assistance on SRF projects. We recommend \$5.5 million for assistance with the application process and \$25 million for planning and design grants.

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<sup>9</sup> 42 U.S.C. § 300j-12(g)(2)(C).

8. **Provide TA funding to nonprofit partners, such as the Funding Navigator, and peer-to-peer initiatives, who have relationships with local water systems, community leaders, and community organizations.** Nonprofits are developing programs to help utilities that serve underserved, disadvantaged, and environmental justice communities seek and secure SRFs and other funds. They can play a critical role in working with communities to identify important projects and help them submit a concept application to the Water Bank's H2O Loans. At that point, Water Bank on-call augmentation consultants can take over. One example is the [Funding Navigator](#). The goal is to ensure more communities benefit from critical investments in safe and climate-resilient drinking water, wastewater treatment, and stormwater management.

### 3. Disadvantaged Community and Affordability Criteria

We support the DEP's idea of developing the same definition of disadvantaged community (i.e., affordability criteria) for CW and DW programs. We offer the following specific recommendations:

1. We support the use of median household income (MHI) <65% of state MHI rather than MHI of \$90k or less (which is actually above the statewide MHI).
2. Among communities that meet the affordability criteria, include within the criteria gradations of financial need, rather than a single binary definition. In other words, consider offering relatively more grants or principal forgiveness (and more favorable loan terms, where a funding package must be a combination of grants/loans) to projects in relatively more financially distressed communities. There is a wide variation in fiscal conditions among the communities whose MHI is less than 65% of the state MHI. E.g., Camden's poverty rate of nearly 40% far exceeds Buena's of 10%, yet they both are below 65% of State MHI. (See attached chart with demographic data.)
3. NJ's environmental justice "overburdened community" economic criterion is worthy of further consideration, and is not mutually exclusive with also using MHI <65% as a factor.
4. We understand that the EPA authorizes the use of criteria related to UE (>5%) and population trends (<2%). Both seem like they could end up either being over-inclusive (e.g., the *statewide* unemployment rate is currently >6% but presumably will rebound) or under-inclusive (e.g., some disadvantaged urban communities have experienced population growth as development patterns change) of the universe of communities with greatest financial need. We cannot support keeping them without a better understanding of how they would be applied and what the likely results would be.
5. Consider including factors based on cost burdens specifically 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.



6. Review the ranking criteria point system to determine whether adjustments should be made. Consider whether the affordability criteria should receive more points than 80 in order for the program to truly prioritize environmental justice criteria. Carefully consider a “circuit breaker” provision that would limit the total amount of PF that any single water system could obtain. (This might be needed if there is a water system that qualifies for principal forgiveness in many categories, such as because it has a consent decree, and would otherwise obtain an inordinate amount of limited PF.)
7. Finally, we expect that EPA will issue guidance emphasizing states’ obligations to avoid any adverse disparate impacts or otherwise violate the non-discrimination requirements of Title VI of the Civil Rights Act, or other applicable federal law, with respect to the state’s allocation of federal water infrastructure funds to communities within the state. DEP should ensure that its affordability criteria are designed such that, when applied in practice, they will satisfy this obligation.

#### **4. Allocation of Grants and Principal Forgiveness**

1. Capital projects should be eligible for grants or principal forgiveness under the WIIP only if they would be eligible under the “base” SRF program. (See explanation below.) This limitation should apply regardless of whether funds for a project are drawn from the base program or from IJIA money.
  - a. For the DWSRF, this means that only communities meeting the “affordability criteria” should be eligible. Additionally, DEP should provide more points in the ranking system to projects in communities that meet the affordability criteria.
  - b. For the CWSRF, communities meeting the affordability criteria would be eligible, although federal law also allows principal forgiveness for certain “green projects” in any community. However, DEP should provide more points in the ranking system to projects in communities that meet the affordability criteria.
2. Under the CWSRF, where a municipality does not meet the affordability criteria or otherwise qualify for grants or principal forgiveness for a capital project, DEP should pilot the approach of offering grants or principal forgiveness to be used for discounts to individual, low-income residential ratepayers. These funds would be used to offset the burden of rate increases that are necessary to pay back loans on an SRF-financed capital project. This is an allowable use of SRF funds under federal law, which can enable a community to receive an SRF loan without making bills unaffordable for low-income ratepayers. We recognize that this approach would be new to New Jersey; therefore, we recommend piloting it initially.
3. DEP should carefully consider the impact of per-project caps for grants or principal forgiveness. We recognize the tension between providing more per community vs. providing support to a larger number of communities. At the same time, strict caps may limit the ability of some

disadvantaged communities to participate in the program, even if the balance of a project's costs are financed with low-interest loans. We encourage DEP to consider and compare the pros and cons of different levels for setting caps, using real-world scenarios of communities and projects that can be anticipated to satisfy the affordability criteria. As noted above, we recommend allowing higher caps in relation to the degree of fiscal distress in a given community. Additionally, for the CWSRF, based on what we currently know, we offer the following initial recommendations regarding caps:

- a. 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.)
- b. For CSO projects, note that only seven municipalities qualify as disadvantaged communities using our recommended threshold of less than 65% of state MHI. If this is correct, then the caps for principal forgiveness would need to be increased in order to allow for full usage of the recommended \$60m. (See attached spreadsheet.)
- c. CSO applicants should construct green infrastructure early in the permit cycle. DEP should separate the CSO principal forgiveness program into "gray" and "green" projects, for the five-year duration of the WIIP. We recommend that 20% of total PF funding for CSOs be dedicated to green infrastructure. We also recommend additional points for green infrastructure CSO projects in the ranking system.
- d. Establish a small grant/principal forgiveness program for communities that have a stormwater utility in place, such as a total of \$2m at 50% principal forgiveness with a per community cap of \$1m. This would incentivize creation of stormwater utilities, which in turn can generate additional local revenue for necessary stormwater infrastructure investments.

## **5. New Performance-Oriented Eligibility Requirements**

We recommend modification to program eligibility requirements to advance public health, cost-efficiencies, environmental justice and climate resilience:

1. Communities receiving funds for LSL replacement should not be allowed to require 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/>)
2. The WIIP program should prioritize projects that reduce flood risk and increase climate resilience. For example, the program should address the fact that an inordinate number of stormwater and nonpoint source pollution projects languish at the bottom 25% of the priority

list. We recommend that the DEP either create a project set aside for climate resilience, establish new design criteria, and/or revise its ranking system.

3. For CSO projects in a large/regional or otherwise economically diverse water/wastewater system, DEP should ensure that the applicant is prioritizing seeking funding for projects that meet the needs of disadvantaged/underserved communities within the system (i.e., funding should be equitable within communities, not only between communities)

## **6. Accurately Describe the Water Funding Gap and Provide Solutions**

**Accurate communications.** DEP should continue to promote the WIIP, in order to ensure broad participation in the stakeholder process and to raise awareness of the new funding opportunities, especially for disadvantaged communities. However, DEP should revise its communications strategy, to also acknowledge the significant remaining funding gap, in order to avoid the new perception that there is adequate grant funding to address the many new water infrastructure mandates and challenges, such as replacing Lead Service Lines, meeting new standards for emerging contaminants, implementing CSO plans, and planning for climate resilience from storms like Hurricane Ida. The department's communications may set false expectations about the need for funding among local officials. It is also hindering our efforts as advocates to engage decision-makers in conversations about the use of American Rescue Plan funds for water infrastructure, since some of them (incorrectly) believe the WIIP will completely fill the funding gap.

Using NJDEP's numbers in the WIIP, we calculate **a five-year water financing gap of \$10B:**

- Slide 13 shows an estimated 5-year funding demand of \$14.7 billion.
- Slide 14 shows over \$900m available for project funding each year over the next five years, which conservatively adds up to \$4.5B.
- The difference is about \$10B.

**Providing solutions.** NJ DEP's WIIP should both describe the amount of new funding and acknowledge the large funding gap that remains for water systems. The WIIP should urge communities to use their American Rescue Plan funds for water infrastructure projects. It should make a commitment on behalf of the Administration to work with the Legislature to allocate a portion of the state's American Rescue Plan funds to help close the funding gap. We also recommend the DEP expands its view past the DEP's SRF Program. This is necessary to fully meet the Commissioner's intention to develop a Water Infrastructure Investment Plan. DEP has the opportunity to set the stage for truly meeting the needs for water infrastructure moving forward by embracing the goals/outcomes of Senate Bill 1229 (Senator Greenstein). These actions will enable the department to get the attention and engagement of mayors.

## **7. Complementary Grant Programs**

We recommend that the WIIP consider the need for two complementary grant programs, which may or may not be able to be included as part of the SRF programs themselves, but are critical for the WIIP to achieve its lo-g term goals:

1. Identify whether there are water systems that cannot access SRF funding, even where there is 50% PF funding, because they cannot afford to take on the loan portion. Identify a way to assist them with identifying and accessing complementary grant programs using other funding sources (including non-DEP/I-Bank state and federal programs).
2. Discuss the need for small grants for water system regionalization studies, including robust public engagement.