June 4, 2010

The Honorable Peter S. Silva  
Assistant Administrator  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20009

Dear Mr. Silva:

We thank you again for meeting with the CIFA officers and want to follow up on some initial thoughts we expressed at that time regarding the draft sustainability policy for water infrastructure. Attached are more detailed comments outlining CIFA’s primary areas of concern with the policy.

While many elements of the draft policy reflect appropriate and useful steps to advance the goal of sustainable water infrastructure, the overall potential impact on State SRF programs raises several key issues worth noting.

The draft policy employs “sustainability” with a lack of clear definition so as to encompass two distinct concepts within the same terminology. This is at best confusing. Combining the effort to promote “smart growth”, described as community sustainability, and the notion of effective utility management practices, referenced as system sustainability, as integrated aspects of a sustainability policy serves to render the term fairly meaningless.

We question the advisability of attempting to advance the agenda outlined in the policy with SRF programs as the vehicle. The SRFs represent only one, limited source of capital financing. It will be neither effective nor reasonable to expect SRF funded projects to meet sustainability goals while the majority of projects, not employing SRF financing, do not follow suit. EPA should take a more holistic approach seeking to apply sustainability throughout the universe of water infrastructure projects regardless of the funding source.

Of equal concern is that the sustainability policy not take on a prescriptive, “one size fits all” approach that would not accommodate state implementation reflecting individual and varying needs and capabilities. One of the core strengths of the SRF programs is the flexibility afforded States to design and manage their SRF programs to best meet the water quality needs they face. A sustainability policy involving SRF programs should be clearly based on that concept of state flexibility.
The current draft leaves the impression that States are uninvolved in efforts to promote sustainability. This is not the case. It would seem that EPA should recognize what States are accomplishing in this regard and build on that foundation. If EPA is not aware of these efforts we will be glad to correct that situation.

Finally, noting the particular emphasis you have placed on the role of the SRF programs in providing assistance to disadvantaged communities, we would hope that the policy in final form will make clear that any funding emphasis given to sustainability efforts should not be at the expense of meeting the needs of disadvantaged communities.

We would appreciate your consideration of our views as the policy evolves and would welcome the opportunity for further discussions with you and your staff.

Sincerely,

Joe Freeman
President

Enclosure
CIFA Comments on EPA’s Draft Sustainability Policy

General comments

1. There are two aspects to “sustainability” that are discussed in this draft policy that are distinct issues, and should be discussed separately and handled differently. While both aspects of sustainability are described in the draft policy, they are not always handled separately.
   a. Community sustainability – this pertains to “smart growth” and the desire on EPA’s part to focus SRF resources on established communities rather than “sprawl”.
   b. System sustainability – this pertains to the management of drinking water and wastewater systems in a manner that assures their long term physical and financial viability.

2. One threshold issue for us is that this is titled, in part, as an “SRF Sustainability Policy”. Many of the issues addressed in the policy are larger than the SRFs and should be dealt with in a larger context, both because it harms the SRFs to implement these goals by making them a condition for our financing and the very goals that the policies are attempting to achieve are severely mitigated if implementation is limited to the SRF context. The SRFs represent only a portion of the total water-related capital improvement financing in the U.S. In Pennsylvania, for example, PENNVEST represents about one fourth of the total amount of water and wastewater funding undertaken in the state. To the extent that the policy goals stated here are desirable, they should be applied to all systems, not just those financed by the SRFs. These goals should be implemented in either or both of the following contexts:
   a. Through comprehensive strategies to promote and encourage sustainable utility management and to demonstrate and highlight the cost-effectiveness of community sustainability with respect to water infrastructure.
   b. As permit conditions, as enforced by EPA and each state’s regulatory agency.

3. The other threshold issue is that, no matter what EPA policy goals are implemented through the SRFs, they should be stated in such a way as to allow for individual implementation at the state level. EPA must respect the established role that the states play in implementing the SRF programs through state laws, policies, and procedures that address each state’s particular needs. A major strength and reason for success of the SRF programs is that they have always been flexible enough to allow for variations across states. Any policy goals implemented through the SRFs should not be so prescriptive as to preclude the states from tailoring their implementation to fit the individual state situations. Nor should they present obstacles to existing sustainability measures that states have already implemented.

4. The draft SRF Sustainability Policy document implies that states are currently doing little or nothing to promote sustainability through their SRF programs. The document makes the following background statement: “This emphasis is not clearly reflected in existing statutes, and individual State project priority systems to not consistently factor such longer-term goals into decisions that are made.” This statement is made without any basis in fact or attempt by EPA to look at what states are doing to address these issues. The entire draft Sustainability Policy suggests that SRF programs across the county are indiscriminately financing projects that promote and encourage poor utility management and sprawling development. The conclusion drawn from this inaccurate premise is that only a national SRF policy can address this problem. States have serious concerns
that this policy and the tone it sets will lay the groundwork for future federal regulations that will impose a one size fits all approach to these issues that will damage the flexibility and effectiveness of the SRF programs.

5. Finally, with reference to the point made previously that SRF funding represents only a minority portion of water capital improvement financing, it seems entirely appropriate that EPA should apply the tenets of the sustainability policy to all “Congressionally Directed Spending Items” for water infrastructure projects. These typically have a higher percentage of grant funding than an SRF loan. As projects specifically mandated by Congress, there can be no logical basis for exempting these projects from meeting sustainability goals.

Statement of Policy

1. “SRF programs should encourage up front planning that yields more sustainable projects, systems and communities in order to build a “pipeline” of sustainable projects eligible to receive federal SRF construction planning.” (page 3)

This is an instance in which “sustainability” is used in both of the above contexts in the same sentence. Again, these are very different issues and must be handled separately. To the extent that the system sustainability goals enunciated in this bullet are desirable, they are desirable for all projects, not just those funded by the SRF. Therefore, all utility managers should have access to appropriate tools, technical assistance and training to promote system sustainability regardless of how they finance capital improvements.

As to the community sustainability goals, these come down to land-use planning issues that cannot be dictated at the national level or for that matter at the state level. Land-use planning is a local prerogative. EPA can promote the principles of sustainable communities and the advantages and benefits. Each state must have flexibility to determine for itself how those principles should be defined and applied in the context of its particular circumstances.

2. “Among projects with comparable public health and water quality protection benefits, priority for SRF construction financing should be given to communities who align their water infrastructure planning with community sustainability and livability goals …”

While we agree with the general intent of the statement, states must have flexibility in determining their own definition of community sustainability goals and the measures they take to promote these goals. States SRF priority systems are integrated with other program features such as eligibility requirements and affordability criteria, all of which can play a role in promoting sustainability.

3. “SRF assistance recipients should employ sustainable management practices, appropriately scaled to the size and type of system....”

This again is a goal that must be implemented across all systems, not just those funded by SRF’s. Again, since we only fund a minority of the water infrastructure projects undertaken annually, to the extent that system un-sustainability is seen as a problem, using the SRFs as the vehicle for addressing this problem will never solve it.

SRF Program Reforms
The very term “Reforms” implies the SRF programs are seriously off course and require the federal government to step in to fix things. The states fundamentally disagree with this characterization of the program recommendations.

1. “Building a “pipeline” of sustainable projects eligible to receive federal SRF construction funding”

   a. The statement suggests that there is a clear definition of a sustainable project that can be used to simply check ‘yes’ or ‘no’ on an application. The process of encouraging and promoting sustainability principles with local governments and utility managers will happen over time and projects will meet those principles to varying degrees. But at the same time, states and local governments have serious infrastructure needs that must be addressed. Attempts to mandate “reforms” to SRF funding will simply serve to make the SRFs more expensive and difficult for communities that need access to affordable financing to meet critical water infrastructure needs. In addition, this approach will never solve the problems that the reforms are intended to address, given the relative size of the SRF programs in the overall water infrastructure financing market.

   b. “4) Promote state use of the additional subsidization requirement in the FY10 budget (with priority for communities who could not otherwise afford a loan) for up-front planning that aligns with community sustainability and considers the full life-cycle costs of infrastructure assets, conservation of natural resources, and alternative approaches to integrate natural or “green” systems into the built environment.”

      Again, this statement addresses both views of sustainability, which should be handled separately.

      While states should have the flexibility to use additional subsidization for up front planning if they chose, promoting the use of ‘planning grants’ as a key ‘reform’ is misguided. The SRFs were established to provide affordable construction financing. Diverting funds for planning grants takes away badly needed capital to meet construction needs. Many states cannot use additional subsidization funds in the manner envisioned here because state laws require allocation of these funds based solely on affordability considerations. Other states may decide that providing technical assistance or using other measures are more cost-effective ways to promote sustainability than providing planning grants. While consultants and local governments tend to like planning grants, the construction grants program showed the folly of funding planning grants that are not directly linked to construction.

2. “Encouraging Community Sustainability”

   a. “Infrastructure sustainability and community sustainability are inextricably linked.” This is not the case. It is very easy to imagine a well-managed water or wastewater system that is charging appropriate user rates and is appropriately planning for long term system maintenance that also happens to be serving a newly developed suburban sprawl community that is expanding into surrounding greenfields.

   b. That having been said, states do not disagree in general with many of the statements in this section, provided that EPA’s role is to encourage states to take these actions rather than requiring them. States must retain the flexibility to define terms like ‘community sustainability’, ‘unsustainable expansion’ (versus sustainable expansion?), and ‘fix it first’ for themselves.
c. As stated earlier, many states have already implemented measures that are consistent with the policies that are contemplated in this section. We would suggest EPA undertake a comprehensive review of the measures that states have already taken through their SRF programs to emphasize maintaining and replacing water infrastructure in existing communities. EPA should also seek to include other states in its pilot program in order to see how CWSRF programs have actually implemented the actions contemplated here.

3. “Promoting sustainable water utilities through effective utility management”

We have no problems with the suggestions made here and, in fact, support them.

4. “Helping small and disadvantaged communities attain and maintain the technical, managerial, and financial (TMF) capacity”.

We have no problems with the suggestions made here and, in fact, support them. Furthermore, EPA should work with Congress to include a technical assistance set-aside in the CWSRF program similar to that in the DWSRF program.

5. “Measuring Success“

We understand and support this effort. Our only caution is to point out that SRF programs should not be held accountable for performance that is beyond their control. Since the attainment of “sustainability” involves many participants, from the systems we fund to the communities in which they are located, any performance measures that are developed must acknowledge the complexity of the process and the limited influence that the SRFs have in it.