



May 1, 2020

The Honorable John Barrasso
Chairman
Committee on Environment & Public Works
U.S. Senate
Washington, D.C.

The Honorable Thomas R. Carper
Ranking Member
Committee on Environment & Public Works
U.S. Senate
Washington, D.C.

Re: Stakeholder Comments on Draft America's Water Infrastructure Act (AWIA) and the Drinking Water Infrastructure Act (DWIA)

Dear Chairman Barrasso and Ranking Member Carper,

The Council of Infrastructure Financing Authorities (CIFA), whose members are the state agencies that implement the Clean Water and Drinking Water State Revolving Funds (SRFs), the preeminent subsidized water infrastructure funding programs, thanks the members and staff of the Environment and Public Works Committee for their hard work in drafting America's Water Infrastructure Act of 2020 and the Drinking Water Infrastructure Act of 2020. CIFA appreciates the opportunity to provide comments on this important legislation which will directly impact investment in water infrastructure – now and in the future.

The Clean Water and Drinking Water State Revolving Funds are the nation's premier programs for financing water infrastructure that protects public health and the environment.

Congress established and invested in the Clean Water and Drinking Water State Revolving Funds to provide a robust, renewable and perpetual source of funding for water infrastructure that protects public health and the environment. Since their creation, these state-federal partnerships, combined, have generated \$179 billion in funding for more than 56,000 water infrastructure projects across America. Today, more than \$75 billion in loan repayments continue to fund new projects, which is more than the total federal funding provided over the life of the programs.

SRF subsidized loans transformed financing for water infrastructure – forever.

Established in 1987, the Clean Water SRF replaced a federal grant program for construction of municipal wastewater treatment facilities. The results of transitioning from a federally-run grant program to a state-run subsidized loan program are clear and compelling.

- ✓ SRFs are effective and cost-effective.
State management of the SRFs ensures federal funding meets the diverse and evolving needs of thousands of communities across the country, from small, rural towns to urban centers. Last year, SRFs funded 2,504 project agreements (1604 for clean water and 898 for drinking water).
- ✓ SRF subsidized loans provide a perpetual source of funding dedicated to water infrastructure.
Loan repayments to the SRF must be used for water infrastructure in perpetuity, which ensures a significant and secure source of funding that is immune to annual budget pressure. Every dollar provided in loans increases the source of funding for future water infrastructure projects.
- ✓ SRF subsidized loans help utilities keep water and wastewater rates affordable.
SRFs provide loans with below market interest rates. In 2019, the average interest rate was 1.5% for loans from the Clean Water SRF and 1.6% for loans from the Drinking Water SRF – about half the market interest rate. At these interest rates, every \$100 million in SRF loans saves between \$17 - \$18 million in interest payments over the life of a 20-year loan. Those savings are passed onto the ratepayers in affordable water and wastewater services.
- ✓ SRF subsidized loans protect federal and state investment in water infrastructure.
SRF subsidized loans require communities to have a financial stake in maintaining water infrastructure that is subsidized by state and federal taxpayers. Requiring “skin-in-the-game” is a proven incentive for asset management.

However, there is growing concern that federal mandates are transforming this successful, sustainable, state-run loan program into a federally-directed grant program that is less effective at meeting the needs of communities.

Until 2009, SRFs had the flexibility to tailor their programs to meet the needs of their communities. Today, federal mandates have requirements for project selection, planning, procurement, wages, construction materials and financing. Federal mandates dictate what materials can be used in construction, how much workers need to be paid for water infrastructure projects, how to procure certain services, and what types of projects get priority for funding. Many of these federal mandates apply to state funds as well.

1987: Congress established the Clean Water SRF to provide loans at or below market interest rates for water infrastructure that protects public health and the environment.

1996: Congress established the Drinking Water SRF to provide infrastructure loans, additional subsidization and technical assistance (set-asides) to help communities meet national standards for safe drinking water. Under the original law, the Drinking Water SRF could use up to 30% of the federal capitalization grant for state-directed additional

subsidization. State-directed additional subsidization is restricted to economically disadvantaged communities that meet affordability criteria.

- 2010: Congress gave the Clean Water SRF the ability to use portions of the capitalization grant for additional subsidization, with limitations set in annual appropriations bills.

Federal Mandate: Congress began mandating that both SRFs use a specific amount of the capitalization grant for additional subsidization. Unlike state-directed additional subsidization, federally-mandated additional subsidization can be used for any project. Annual appropriations bills defined the federally-mandated additional subsidization, which has been both a flat percentage and a range with both a floor and a ceiling over the years.

Federal Mandate: Congress began mandating that the Clean Water SRF use 10% of their capitalization grant on green infrastructure and energy and water efficiency projects.

Federal Mandate: Congress began mandating that all SRF projects, including those funded with 100% state funds, comply with Davis Bacon, which requires mechanics and construction laborers to be paid the federal prevailing wage. This mandate was made permanent for both programs in 2012.

Federal Mandate: Congress began mandating that all SRF projects, including those funded with 100% state funds, be built using only American-made iron and steel products. This federal mandate was made permanent for the Clean Water SRF in 2014 and is set to expire for the Drinking Water SRF in 2023.

- 2014: Congress gave SRFs the ability to use up to 30% of their capitalization grant for additional subsidization for communities that meet affordability criteria and for energy efficiency, water efficiency, stormwater management, and sustainable project planning, design, and construction.

Federal Mandate: Congress mandated that all wastewater treatment works, including those funded with 100% state funding, conduct a Cost and Effectiveness Analysis with a certification that processes, materials, techniques and technologies maximize efficient water use, reuse, recapture, water and energy conservation. This requirement applies to large complex projects such as a new wastewater treatment facility as well as minor rehabilitation and replacement projects, such as replacing underground sewer pipes. Previously, SRFs determined which projects required a cost and effectiveness analysis.

Federal Mandate: Congress mandated that all wastewater treatment works, including those funded with 100% state funding, develop and implement a Fiscal Sustainability Plan which includes an inventory of critical assets, an evaluation of the condition and performance of assets, a funding plan to maintain, repair, and replace assets and a

certification that the plan includes water and energy conservation. This requirement also applies to large complex projects such as a new wastewater treatment facility as well as minor rehabilitation and replacement projects, such as replacing underground sewer pipes. SRFs have always encouraged communities to develop comprehensive asset management plans for their water infrastructure.

Federal Mandate: Congress mandated that wastewater projects funded by the annual capitalization grant for the Clean Water SRF must use the federal procurement process for architectural and engineering services. In states that use a similar procurement process, this mandate isn't an issue. However, in other states, complying with multiple procurement processes – federal, state and local – is more challenging. For this reason, some SRFs no longer fund architectural and engineering services with federal funding. Additionally, this requirement may make federal funding of design-build projects more challenging, if not impossible.

2018: Federal Mandate: Congress mandated that the Drinking Water SRF use at least 6% of the capitalization grant for additional subsidization for disadvantaged communities and increased the cap on state-directed additional subsidization to 35%.

2019: Federal Mandate: Congress mandated all funding provided in a new authorization for the Drinking Water SRF to address emerging contaminants, with a focus on perfluoroalkyl and polyfluoroalkyl, be used only for grants.

Comments on Draft Legislation

Funding

Increased federal funding is needed to meet the growing demand for water infrastructure. According to the 2017 Infrastructure Report Card by the ASCE Foundation, \$376 billion is needed to meet current and future demand for water and wastewater. Increased federal funding is needed to address a range of challenges, from replacing aging infrastructure, including lead and copper pipes, to addressing public health concerns with emerging contaminants. Because of the program's 20% match requirement, increasing federal funding also increases state funding for water infrastructure.

CIFA supports reauthorization of the Clean Water State Revolving Fund to at least the funding levels in the legislation.

Recommendation for WRDA Section 2015 and Safe Drinking Water Act: Section 1452: Increase the authorization levels for the Clean Water and Drinking Water State Revolving Funds by an additional \$50 million by redirecting funding from the proposed discretionary grant programs at the U.S. Environmental Protection Act to the SRFs.

Increasing funding for the SRFs is more effective and economical than establishing new discretionary grant programs for infrastructure at the U.S. Environmental Protection Agency.

SRFs are effective because they fund water infrastructure projects based on state priorities. Creating a federal discretionary grant program within the U.S. Environmental Protection Agency for exactly the same purpose as the SRFs circumvents this proven state prioritization process.

Recommendation for AWIA Section 2016 and DWIA Section 14: Increase the authorization for the SRFs instead of creating new discretionary grant programs for infrastructure at the U.S. Environmental Protection Agency.

Restricting federal funding for the Drinking Water SRF to specific projects, such those that address emerging contaminants, should not reduce funding for state priority projects.

SRFs have a proven process for prioritizing projects for funding. While the additional authorization to address emerging contaminants is greatly appreciated, it must not be offset by reductions in the authorization for other projects or come at the expense of other projects identified by the state as a priority. Additionally, in the event an SRF doesn't receive enough applications to expend the appropriation, the SRF should be able to use the appropriation on any project.

Recommendations for DWIA Section 14: Add language to protect funding for other projects such as:

"No Impact on Other Federal Funding – No funds shall be made available in a fiscal year to the Administrator for this purpose if –

(A) the total amount appropriated for fiscal year for State loan funds under section 1452 of the Safe Drinking Water Act is less than either the amount made available for such purpose in fiscal year 2019 or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater.

(B) the total amount appropriated for fiscal year for water pollution control revolving funds under title VI of the Federal Water Pollution Control Act is less than either the amount made available for such purpose for fiscal year 2018, or 105 percent of the previous fiscal year's appropriation for such purpose, whichever is greater."

Recommendations for DWIA Section 14: Add language to ensure SRFs that don't receive applications for projects to address emerging contaminants can use the funding for other priority projects, such as: "to the extent that there are sufficient applications from eligible recipients."

Additional Subsidization

Additional subsidization should be based on need, not federal mandates.

Additional subsidization is an important tool that SRFs use to fund critical water infrastructure projects that would not otherwise be undertaken. However, additional subsidization permanently reduces funding for future water infrastructure which is equally important.

Since 2009, additional subsidization has removed \$8.78 billion from the revolving loan funds – more than SRF federal appropriations for the last three years. Had this funding been provided in loans, repayments would be funding a significant number of additional projects today.

Codifying additional subsidization at 10% of the Clean Water SRF and 20% of the Drinking Water SRF will continue to permanently remove funding for future water infrastructure. Additionally, the federal mandate for the Drinking Water SRF isn't capped. Without a ceiling, 100% of the annual federal capitalization grant can be used for principal forgiveness, grants or negative interest loans – completely eliminating a recurring source of revenue for water infrastructure in the future.

Allowing SRFs to make the decision on how much additional subsidization is necessary, up to a limit, ensures important projects are built today, while maintaining a robust source of funding for water infrastructure for future generations.

Recommendation for DWIA Section 2004: Allow the Clean Water State Revolving Fund to use up to 10% of the capitalization grant for additional subsidization on any projects (AWIA Section 2012) and the Drinking Water State Revolving Fund to use up to 20% of the capitalization grant for additional subsidization on any project.

Additional subsidization will help communities address the threat of emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances.

SRFs currently fund projects to address emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances. The additional authorization of \$300 million for these projects provides additional resources to address the threat to public health. Because the challenge of emerging contaminants varies across the nation, providing SRFs with the flexibility to use up to 100% of the authorization for additional subsidization will ensure communities receive needed assistance today, while providing the opportunity to create a recurring source of revenue to address threats to public health in the future.

Additionally, requiring grants as the only form of additional subsidization increases the burden of compliance on communities that can least afford it. Principal forgiveness is the same as a grant without the additional federal requirements associated with federally funded projects, such as those funded by the capitalization grant. Like principal forgiveness, grants are often given in combination with a subsidized loan. Of the 102 SRF programs, 91 use principal

forgiveness exclusively and two states – Oklahoma and Washington – actually prohibit the use of grants in their SRFs.

Recommendation for DWIA Section 2004: Allow SRFs to use up to 100% of the funds for all forms of additional subsidization – principal forgiveness, grants and negative interest loans.

Other Issues

Planning is already an eligible use of the Clean Water SRF.

It's not clear how this addition would impact the SRFs, "to any qualified entity, as determined by the Administrator, to provide assistance in the design and engineering of any project described in this subsection."

Small and rural communities will benefit from technical assistance.

Allowing Clean Water SRFs to use 2% of their capitalization grant to fund technical assistance, just like the Drinking Water SRFs, will provide much needed support to small, rural and tribal communities. However, restricting the use of providers to not-for-profit organizations limits the ability of SRFs to meet those needs.

Allowing Clean Water SRFs to determine the best way to provide technical assistance – whether through a not-for-profit organization, private entity, within their state agency or through another state, regional, interstate, or municipal agency – will ensure funding is used for most suitable service provider.

Recommendation for AWIA Section 2012: Remove "for nonprofit organizations (as defined in section 104(w))" or add "private entity, state, regional, interstate, or municipality."

While well-intended public policy, the cumulative impact of increased federal mandates has unintended consequences.

Compliance with federal mandates on SRF subsidized loans increases the cost of water infrastructure projects, which requires communities to borrow additional money for compliance, not construction. Allowing SRFs, states and municipalities to determine planning and procurement requirements will reduce the cost of compliance on SRF loans.

Recommendation for the Clean Water Act Section 1382 and 1383: Repeal federal mandates for a Cost and Effectiveness Analysis, Fiscal Sustainability Plan and the federal procurement process for architectural and engineering services for Clean Water SRF loans.

Conclusion

The Clean Water and Drinking Water State Revolving Funds are a national model for financing infrastructure. Continuing to fund water infrastructure, while maintaining the financial integrity of these programs is important to the future of our nation.

Thank you again for providing the opportunity to comment on this important legislation. Please contact CIFA's Executive Director, Deirdre Finn, at dfinn@cifanet.org or (850) 445-9619.

Sincerely,



Kim Colson, CIFA President
Director, Division of Water Infrastructure
North Carolina Department of Environmental Quality

About CIFA

CIFA is a national not-for-profit organization that represents state government agencies, including financing authorities and departments of health and environmental protection, that manage the Clean Water and Drinking Water State Revolving Funds.

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