

**Questions for Deirdre Finn
Executive Director, Council of Infrastructure Financing Authorities:**

**Subcommittee on Water Resources and Environment
Hearing May 6, 2021**

Questions from Ranking Member David Rouzer (NC):

- 1. Rebecca Hammer, in her written testimony for the hearing, testified that “The Council of Infrastructure Financing Authorities’ SRF Project Pipeline identifies over \$47 billion in specific clean water infrastructure projects across the country that could be commenced within the next two to three years if funding is provided.” Please explain how CIFA came up with that number.**

CIFA has identified an estimated \$47 billion in potential clean water infrastructure projects along the continuum of project development, from defining the need to design and engineering to groundbreaking. Not all of the projects are ready to “commence” or proceed to construction within the next two to three years.

In anticipation of potential stimulus funding in the aftermath of the coronavirus pandemic, CIFA developed the S.A.F.E. Water Infrastructure Action Plan, an advocacy initiative to Save, Accelerate, Fill and Expedite water infrastructure projects through the Clean Water and Drinking Water SRF Project Pipelines. Below is an excerpt from the Action Plan explaining the development and scope of the SRF Project Pipelines.

“SRFs used a variety of tools to develop their S.A.F.E. SRF Project Pipeline, including current year plans and project lists, multi-year plans and project lists (up to five years), a survey of utilities for new projects, increased funding for current projects, and the addition of other known projects, such as projects that applied but didn’t receive funding, projects on planning lists, and projects in utilities’ capital improvement plans.

The SRF Project Pipeline has some “shovel-ready” projects but doesn’t focus exclusively on projects that are ready for construction. Because the coronavirus may cause periodic, localized economic shutdowns over the next several years, the S.A.F.E. Water Infrastructure Action Plan focuses on projects along the entire spectrum of water infrastructure, from concept to construction. Allowing funding to be invested over the next two to three years will provide potential borrowers with the confidence to increase investment in water infrastructure, even during the uncertain times that lie ahead.”

- 2. Rebecca Hammer, in her written testimony for the hearing, testified that “For its first two decades, the [Clean Water State Revolving Fund (CWSRF)] did not fund many green infrastructure projects.” Why is that?**

The U.S. Environmental Protection Agency (EPA) didn’t start reporting data on green projects in the National Information Management System (NIMS) until the federal mandate for the Green Project Reserve was established in 2009. Before then, it’s likely that green projects, such as water and energy efficiency projects, were classified as grey infrastructure.

Additionally, the U.S. Environmental Protection Agency (EPA) required SRFs to develop a business case to make the case for eligibility of some potential green projects. As a result, eligibility for the Green Project Reserve has evolved since 2009 and some projects eligible today may not have been captured in early reporting.

To determine a more accurate accounting of SRF funding for green projects, nearly 24,000 loan agreements executed prior to 2009 would have to be reviewed and potentially reclassified. Given changes in eligibility for the Green Project Reserve over the last decade, loans executed since 2009 may also need to be reviewed to ensure all green projects are captured.

However, CIFA believes it is more important to focus on the last decade rather than the first two decades, particularly more recent trends which indicate significant and sustained growth in funding for green projects.

According to the Clean Water Benefits Reporting System (CBR) as reported in National Information Management System (NIMS), SRFs invested \$1.61 billion in green projects in 2020, up from \$66 million in 2009 when EPA first started measuring investment for green projects. In total, SRFs have funded more than \$8.6 billion in green projects since 2009.

Growth in some project categories is especially significant. Before 2009, the SRFs funded 100 water reuse projects; since 2009, SRFs funded 250 water reuse projects, an increase of 250%. Of the 301 loans closed for stormwater projects since 2017, 141 or 47% were green stormwater projects, accounting for 43% of funding for stormwater during the same timeframe.

CIFA believes funding for green projects will continue to grow based on continued education about the benefits of green projects and the evolving priorities of states and communities.

- 3. Rebecca Hammer, in her written testimony for the hearing, said “Green infrastructure has received less CWSRF investment than other Green Project Reserve (GPR) categories, despite the fact that green stormwater projects have been found to have ‘the most secondary benefits’ of all GPR project types.” Please explain why this is the case.**

According to NIMS, SRFs closed more loans for green infrastructure projects than for energy or water efficiency projects in 2020 (33 green infrastructure projects, 29 energy efficiency projects and 29 water efficiency projects). That same year, SRFs provided more than \$1.61 billion for green projects, including 32% for energy conservation, 30% for environmentally innovative projects, 26% for green infrastructure, and 10% for water efficiency.

Decisions about investment in water infrastructure are impacted by multiple factors, including the responsible party, financial eligibility, and cost of operations and maintenance as well as primary and secondary environmental benefits. Generally, the determining factors for green infrastructure projects are more complex than for energy and water efficiency and environmentally innovative projects.

Responsible party. Water and energy efficiency projects are typically infrastructure improvement projects for wastewater or reuse treatment facilities and conveyance systems, all of which are managed by a utility.

Conversely, green infrastructure projects are more likely to be built throughout a community and various units of local government may be responsible for managing the infrastructure. Roads departments are more likely to be responsible for installing permeable pavements and bioswales (vegetative ditches used to channel and filter stormwater). Facilities departments are more likely to be responsible for installing green roofs and cisterns in publicly owned buildings, such as libraries and courthouses, which offer limited opportunity. Parks departments are more likely to be responsible for building rain gardens in publicly owned open spaces and recreation areas.

Financial eligibility. To qualify for an SRF loan, a borrower must identify a dedicated source of revenue to repay the loan. Wastewater, water reuse and stormwater utilities have a revenue stream of user fees to repay SRF loans.

Conversely, identifying a dedicated source of revenue for green infrastructure projects can be more challenging, particularly in communities without a stormwater utility. In those communities, green infrastructure projects must often compete with other community priorities and projects for local funding.

The cost of operations and maintenance. Water and energy efficiency projects can reduce the cost of operations, which provides a financial incentive for infrastructure investment. Often, energy conservation projects pay for themselves, which allows utilities to maintain affordable user rates. Water reuse projects can also meet growing demand, reducing the demands on potable water which can also help to maintain affordable rates.

Conversely, green infrastructure projects, which require routine maintenance to maintain their effectiveness, can actually increase the cost of operations and maintenance. As noted by Kevin Robert Perry, witness representing The American Society of Landscape Architects, “it’s really the maintenance end where you see a lot of communities very nervous about implementing green infrastructure at the wide scale.”

Congress should consider a broader measure of investment in green projects, including investments by private sector entities which are not eligible for funding under the Clean Water SRF.

4. Rebecca Hammer, in her written testimony for the hearing, said that “states often fail to meet the [Green Project Reserve (GPR)] requirement.” Please explain why this is the case.

Since 2009, Congress has provided \$21.3 billion in federal funding to the Clean Water SRF. During the same timeframe, SRFs have funded \$8.6 billion in green projects, 40% of total federal funding.

Meeting the requirement for the Green Project Reserve is based solely on the number of eligible loans closed within each fiscal year. This restrictive, short-term measure captures a snapshot in time but doesn’t provide a complete and comprehensive representation of SRFs funding of green projects.

Alternatively, if compliance was based on cumulative funding of green projects since the Green Project Reserve was established, all states exceed the requirement, many by more than double. (See state-by-state chart in question 10.) Measuring compliance over multiple years would also incentivize large, transformational green projects that take time to develop and years to construct.

The ability to close loans for eligible green projects can vary significantly from year-to-year based on a variety of factors, many of which are outside the control of the SRFs. For example, three SRFs, mentioned in the written testimony, didn't meet their Green Project Reserve for various, valid reasons.

- Despite a record number of applications, the Oregon SRF didn't close any loans on eligible applications because the green projects weren't ready to proceed to construction within the fiscal year. The expectation is that these projects will move forward in future years.
- The Florida SRF received both their 2019 and 2020 capitalization grants in fiscal year 2020, which doubled the federal mandate within one fiscal year. According to their Annual Report, "Because the 2019 capitalization grant was received in FY 2020, the requirements for the 2019 grant were to be met in FY 2020. Because sufficient projects to meet the green requirement were not submitted during the fiscal year, this requirement was not met. Additional green projects will be solicited in FY 2021 and we anticipate this shortfall will be made up in FY 2021."
- According to the Missouri SRF Annual Report, "The two projects that were identified as GPR on the 2019 IUP did not close due to project delays. Once these projects close, the GPR requirements for FFY 2018, 2019, 2020 capitalization grants will be met. With FFY 2021 IUP, the Department will increase utilization of the Green Project Reserve by offering Water Quality Incentive Grants for green infrastructure."

5. Rebecca Hammer, in her written testimony for the hearing, said that "Congress should require [the Environmental Protection Agency (EPA)] to adopt regulations implementing the provision of the Water Resources Reform and Development Act (WRRDA) of 2014 directing CWSRF recipients to maximize water and energy conservation in all projects." What would be the effects of such a requirement?

According to a survey of SRFs, the cumulative impact of federal requirements is the biggest impediment to increasing investment in water infrastructure. More prescriptive regulation will only exacerbate the current inefficiency and ineffectiveness of one-size-fits-all federal mandates.

For example, the current Water and Energy Conservation Certification, enacted in 2014, requires all SRF loan recipients to evaluate the cost to build, maintain and replace the project and select the "project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation." While well-intended, this certification is simply not applicable to many projects funded by the Clean Water SRFs.

- Water conservation, which is intended to reduce consumption of drinking water, is largely impractical for clean water infrastructure whose primary purpose is to collect and clean wastewater and stormwater runoff.
- Energy conservation is impossible to achieve in many clean water projects, such as replacing pipes, restoring wetlands, and rebuilding sewer systems that use gravity, not man-made power.
- Conversely, many communities pursue clean water projects with the singular purpose of water reuse and energy conservation. Requiring a water and energy efficiency certification is required but unwarranted for these projects, which are specifically designed to achieve, and even exceed, the fundamental goal of the federal mandate.

Developing prescriptive regulation for one-size-fits-all federal mandates will increase the cost of water infrastructure, especially for small, rural and disadvantaged communities which are the vast majority of borrowers of the Clean Water SRFs.

6. While resiliency and sustainability practices and technologies may benefit some communities, it is essential these initiatives do not take a “one-size fits all” mandated approach. Some communities, especially small and rural communities, may not have the means or the need to utilize these practices in their communities. What can be done to ensure that small and rural communities are provided flexibility in implementing resiliency and sustainability practices and technologies, as appropriate, in their communities?

Recognizing the needs, challenges and limitations of small communities is essential to developing a realistic, relevant and sustainable plan to build resiliency, including environmental, professional and financial resiliency.

The vast majority of Clean Water SRF borrowers are small, rural and disadvantaged communities whose priority is providing basic, affordable wastewater and stormwater services. In 2020, Clean Water SRFs closed 1,601 subsidized loans; nearly two-thirds of those loans (1,056 or 66%) went to communities with a population of 10,000 or fewer and more than half of those loans (862 or 54%) went to communities with fewer than 3,500 people.

One-size-fits-all federal mandates set unrealistic expectations for these small communities. The vast majority of projects in small communities are pipe replacement and minor rehabilitation projects, most of which offer extremely limited opportunities for increasing water and energy efficiency. Many of these small communities don't have full-time professional staff to manage their utility, let alone adopt the federal procurement process to hire an engineering firm or implement a complex, long-term environmental resiliency and fiscal sustainability plan.

Clean Water SRFs provide significant support to small borrowers, from pre-planning through loan close-out. Relief from one-size-fits-all mandates would allow SRFs to customize support for small communities to foster resiliency, including environmental, professional and financial resiliency.

7. Are more water infrastructure projects being built today under the CWSRF program that may never have been able to be built if the program was established as a Federal grant program instead of a revolving loan program? Please explain.

The Clean Water State Revolving Funds are a national model for infrastructure investment. Federal funding is used to capitalize the loan programs, creating a permanent, recurring, resilient source of revenue for water infrastructure projects.

Grants are one-time; loans are forever. While federal funding for grants is used only once, federal funding for loans is used over-and-over again, providing a protected and sustainable source of funding for future water infrastructure projects in perpetuity.

Early capitalization grants for the Clean Water SRFs have been recycled at least once and used to build projects that may never have been built if federal funds were used for one-time grants. Since the program was created, Congress has provided \$47 billion in federal funds to capitalize the Clean Water SRFs. Today, nearly \$60 billion of state and federal funding remains revolving in the program – \$13 billion more than three decades of federal funding.

8. Only some states leverage their existing state revolving fund (SRF) programs. How can Congress incentivize states to better leverage Federal SRF funds and invest more state dollars in water infrastructure?

It's important to note that decisions to leverage the SRFs may be made by the Governor, the Legislature or other state office or official, not the SRFs.

Eliminating the requirement to provide state match for federally mandated additional subsidy may incentivize leveraging. Currently, SRFs that leverage must borrow funds to match federal funding that they are then required to provide as grants and grant-equivalents. Because loan repayments are used to repay bonds, requiring state match for mandated additional subsidy is a disincentive for leveraging.

Eliminating federal mandates on state funds may incentivize greater contributions of state funds, including through leveraging. Currently, these federal mandates apply to projects funded exclusively with state funds, increasing the cost of water infrastructure projects:

- Davis Bacon, which requires mechanics and laborers to be paid the federal prevailing wage and has very prescriptive compliance requirements.
- American Iron and Steel, which requires projects funded by the SRFs to use iron and steel from U.S. manufacturers.
- Water and Energy Efficiency Certification, which requires all borrowers to certify that they evaluated the cost to build, maintain and replace the project and selected the “project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation.”
- Fiscal Sustainability Plan, which requires borrowers who are building treatment works to certify that they have a financial plan to maintain assets funded by the Clean Water SRF loan.

- 9. In what ways have Federal mandates, particularly on SRF loan recipients, and continued federalization of the CWSRF had the unintended consequence of diminishing the program's ability to efficiently and effectively respond to the needs of local communities, complicating the program, and dissuading greater investment in water infrastructure? What improvements would help local communities respond more efficiently and effectively?**

Federal mandates increase the administrative cost of water infrastructure for all communities, requiring many small borrowers to increase their loan amounts to ensure adequate funding for compliance.

In many cases, federal mandates are duplicative of state law. For example, the federal mandate for Davis Bacon, which requires SRF borrowers to pay the federal prevailing wages to mechanics and laborers, is duplicative of state prevailing wage laws in 26 states and the District of Columbia. Paying the federal wage is not the problem because many contractors must pay more than the federally mandated wages to attract skilled workers, particularly in communities with robust economies and tight job markets. The primary issue is the very prescriptive paperwork and processes to demonstrate compliance with Davis Bacon. In states with state prevailing wage laws, compliance is double the work without any known benefit to workers.

In other instances, federal mandates conflict with state law. For example, the Massachusetts Clean Water SRF no longer funds engineering services with federal funds because of the federal mandate requiring the use of the federal procurement process for these services. Instead, the Massachusetts SRF issues two loans – one funded by state money for engineering and one funded by federal funds for construction. In other states, borrowers simply don't pursue funding for engineering from the Clean Water SRF because of the federal mandate for procurement of engineering services.

Increased federalization of the Clean Water SRFs also erodes the creative problem-solving needed to address today's complex water challenges. The Clean Water SRFs became one of the most effective programs for infrastructure investment because states could customize their programs to meet the needs and priorities of their communities. One-size-fits-all mandates diminish the flexibility and adaptability that made the Clean Water SRFs so effective.

Additionally, more SRF staff must be dedicated to ensuring compliance with federal mandates, leaving fewer resources to support the development of new water infrastructure projects.

- 10. Do small and medium communities have the professional staff to comply with the myriad of Federal SRF mandates? What can be done about this?**

Small communities with a population of fewer than 10,000 often don't have a full-time professional staff to manage capital projects. Often, these communities must hire staff or contract with consultants to ensure compliance with the increase in federal mandates, adding to the administrative cost of water infrastructure on communities that can least afford it.

Communities with populations of 10,000 to 100,000 are more likely to have professional staff to manage a capital project. However, smaller communities within this range can also struggle with attracting and retaining professional staff, including directors, operators, accountants and customer service staff.

Restoring flexibility within the Clean Water SRFs to determine loan requirements, instead of one-size-fits-all federal mandates, will ensure small and medium communities are considering the financial and environmental factors that are most appropriate for their water infrastructure projects.

- 11. You noted in your written testimony that some SRFs have expressed concern about their ability to meet the 20 percent state match requirement if funding is increased five-fold within one year. Can you explain why this match requirement could be a problem?**

Clean Water SRFs provide state match in a variety of ways. Depending on a state's economic recovery from the coronavirus pandemic, states that rely on annual appropriations may have a challenge matching significant increases in appropriations. Mandated additional subsidy may also pose a challenge for SRFs that use bond proceeds for state match, because loan repayments are needed to repay bonds.

States, such as California, have issued short-term debt, which must be repaid with interest earnings from loans, to generate state match. Given the extremely low interest rate environment experienced in recent years, loan prepayments, combined with a generous policy of additional subsidy, interest earnings have been impacted. California has also issued loans with a local match component to generate state match. Unfortunately, also due to the very low interest rate environment, borrowers have not been willing to participate in the local match portion of the SRF program.

- 12. You noted in your written testimony that other SRFs have expressed concerns about the ability to fund the best projects, if timelines remain the same or are shortened, as they were with the *American Recovery and Reinvestment Act of 2009*. Please explain.**

The American Recovery and Reinvestment Act of 2009 (ARRA) required SRFs to close loans on "shovel ready" construction projects within 18 months or lose funding.

Typically, SRFs have two years to apply for the annual capitalization grant and five years to spend the funding. Under ARRA, the use-it-or-lose-it condition, combined with a shortened timeframe, created a rush to close loans that favored larger infrastructure projects. The restriction to fund only "shovel-ready" projects also displaced other projects throughout the SRF Project Pipeline, allowing some projects to "jump the line" for funding. The combination of these federal mandates, while well-intentioned, upended the SRFs' proven process for determining priorities for funding water infrastructure projects.

- 13. You noted in your written testimony that the Federal mandate requiring SRF loan applicants to demonstrate compliance with Federal prevailing wage laws is very prescriptive, and creates a significant compliance and paperwork burden, without providing any additional financial benefit for workers. Would you explain how allowing compliance with equivalent state laws in lieu of Federal compliance procedures could alleviate state burdens while maintaining fair wages for workers?**

Under federal law, borrowers of the Clean Water SRFs, including loans fully funded by state monies, are required to pay the federal prevailing wage to mechanics and laborers for the job classification in the county of the construction project, known most commonly as Davis Bacon. The SRFs, borrowers, contractors and subcontractors must perform prescriptive paperwork and processes to demonstrate compliance with the federal mandate. Borrowers, contractors and subcontractors in 26 states and the District of Columbia must also demonstrate compliance with state prevailing wage laws, in addition to federal law.

Paying the federal wage rate is not the primary issue. For the vast majority of projects, contractors and subcontractors must pay workers more than the federal prevailing wage rate to attract skilled workers, particularly in communities with robust economies and competitive job markets. The most common complaint is the very prescriptive federal procedures and paperwork required by the U.S. Department of Labor (DOL) to demonstrate compliance with Davis Bacon.

Below are a few examples from [EPA's 2017 Guide for SRF Compliance with Davis Bacon](#):

- Loan recipients must collect weekly payroll reports from contractors and subcontractors.
- Loan recipients must review evidence of fringe benefit contributions claimed by contractors and subcontractors.
- Loan recipients must interview construction workers to confirm the correct wages were paid.
- If a wage for a particular job in a particular county isn't published, contractors must request a wage determination from DOL, a process called conformance, which can take up to 30 days.
- Contractors may be disqualified for having an inaccurate federal prevailing wage, even if the wage changed during the bid period.
- SRFs must conduct inspections and spot-check payroll reports collected by loan recipients.

CIFA has three specific recommendations to reduce paperwork and process while maintaining prevailing wages for workers.

- The DOL could adopt state prevailing wages for heavy construction (majority of water projects), which they routinely do for highway construction.
- The DOL could consider compliance with state prevailing wage laws as demonstration of compliance with Davis Bacon, eliminating the duplication of paperwork and process.

- EPA could allow States to develop compliance procedures to demonstrate compliance with Davis Bacon, just like States have done for environmental compliance since the programs were established. States develop the State Environmental Review Process (SERP) to comply with National Environmental Policy Act (NEPA).

14. The use of green infrastructure is becoming much more accepted on a widespread basis today as compared with five or ten years ago. Is there really a need for a “green” set-aside mandate with the Clean Water SRF today?

Funding for green projects will continue to grow, with or without the federal mandate, because these projects are state and local priorities.

As noted previously, 40% of federal funding since 2009 has been spent on green projects eligible under the Green Project Reserve. As evidence that a mandate isn’t necessary, the Drinking Water SRF, which doesn’t have a mandate, used 14% of their federal funds since 2009 on eligible green projects.

Green Project Reserve for the Clean Water SRF

State	Federal Funding since 2008	Spending on Green Projects	%
Alabama	\$ 235,958,500	\$ 43,808,913	19%
Alaska	\$ 126,121,800	\$ 26,861,443	21%
Arizona	\$ 142,447,100	\$ 40,476,351	28%
Arkansas	\$ 137,939,900	\$ 198,723,531	144%
California	\$ 1,509,112,307	\$ 2,051,670,442	136%
Colorado	\$ 169,344,400	\$ 46,288,996	27%
Connecticut	\$ 258,521,800	\$ 35,649,893	14%
Delaware	\$ 103,252,400	\$ 100,514,706	97%
Florida	\$ 715,349,493	\$ 236,163,068	33%
Georgia	\$ 374,964,216	\$ 311,458,609	83%
Hawaii	\$ 163,088,800	\$ 67,743,334	42%
Idaho	\$ 103,252,400	\$ 131,875,350	128%
Illinois	\$ 954,463,933	\$ 314,966,571	33%
Indiana	\$ 508,606,048	\$ 621,510,310	122%
Iowa	\$ 294,674,200	\$ 130,180,072	44%
Kansas	\$ 190,453,500	\$ 85,701,073	45%
Kentucky	\$ 268,585,200	\$ 62,622,640	23%
Louisiana	\$ 239,430,500	\$ 36,684,426	15%
Maine	\$ 163,319,600	\$ 80,690,046	49%
Maryland	\$ 510,421,657	\$ 216,489,252	42%
Massachusetts	\$ 716,522,029	\$ 140,677,580	20%
Michigan	\$ 907,431,252	\$ 233,160,195	26%
Minnesota	\$ 398,426,165	\$ 149,335,778	37%
Mississippi	\$ 186,500,093	\$ 19,981,710	11%

Missouri	\$	603,702,512	\$	236,607,038	39%
Montana	\$	103,252,400	\$	27,376,031	27%
Nebraska	\$	107,626,700	\$	52,857,503	49%
Nevada	\$	103,252,400	\$	44,900,863	43%
New Hampshire	\$	217,636,900	\$	69,498,053	32%
New Jersey	\$	1,053,501,973	\$	141,788,838	13%
New Mexico	\$	111,076,700	\$	42,979,820	39%
New York	\$	2,753,037,314	\$	397,612,493	14%
North Carolina	\$	352,199,248	\$	148,484,429	42%
North Dakota	\$	103,926,700	\$	85,773,132	83%
Ohio	\$	1,226,374,893	\$	295,019,116	24%
Oklahoma	\$	170,457,300	\$	74,155,749	44%
Oregon	\$	238,382,700	\$	43,945,073	18%
Pennsylvania	\$	835,963,728	\$	158,030,647	19%
Rhode Island	\$	141,607,900	\$	30,651,118	22%
South Carolina	\$	212,081,670	\$	42,909,865	20%
South Dakota	\$	103,252,400	\$	12,723,217	12%
Tennessee	\$	306,571,400	\$	119,457,472	39%
Texas	\$	923,051,700	\$	325,840,020	35%
Utah	\$	110,905,500	\$	22,452,523	20%
Vermont	\$	106,526,700	\$	38,792,107	36%
Virginia	\$	431,900,531	\$	192,568,905	45%
Washington	\$	367,033,331	\$	115,470,269	31%
West Virginia	\$	329,262,879	\$	45,098,026	14%
Wisconsin	\$	570,537,777	\$	387,221,250	68%
Wyoming	\$	103,252,400	\$	19,030,389	18%
Puerto Rico	\$	284,720,041	\$	51,553,042	18%
	\$	21,349,282,990	\$	8,606,031,277	40%