

**State Water Infrastructure Authority  
December 12, 2023 Meeting  
Agenda Item N – Viable Utility Program Update**

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**Division of Water Infrastructure Staff Report**

**Background**

Session Law 2020-79, entitled in part “An Act to Improve the Viability of the Water and Wastewater Systems of Certain Units of Local Government...”, authorizes the State Water Infrastructure Authority (Authority) and Local Government Commission (LGC) to develop criteria to assess and review local government units (LGUs), and to utilize the assessment and review process to identify distressed LGUs.

In the Fall of 2020, the Authority and LGC developed Identification Criteria and Assessment Criteria to evaluate LGUs and identify distressed LGUs. The Authority and LGC adopted the Assessment Criteria and the Identification Criteria at their respective meetings in November/December 2022.

As of the 2023 assessment period, 145 LGUs have been designated distressed by the Authority and LGC. Many of these LGUs developed asset management plans including capital improvement plans (CIPs), performed rate studies and financial analyses, and investigated merger/regionalization opportunities prior to being formally designated distressed. Some of these efforts were completed without funding from the Division of Water Infrastructure (Division) or Division involvement.

Many distressed LGUs and their resource partners, particularly Councils of Government (COGs), are committed to meeting the distressed systems’ statutory requirements so they can be de-designated. Conversely, many LGUs apply for asset inventory and assessment (AIA) funding as a means to receive additional priority rating points in construction applications instead of building best practices for utility management. As the Statewide Water and Wastewater Master Plan states, the Division’s goal is to direct LGUs away from positioning themselves to receive grant funding and toward enabling the LGU to manage their system better.

Division staff are aware that there is no single path to de-designation, and progressing toward de-designation will require a combination of best practices and unique solutions for each LGU. As discussed in this staff report, the Division’s proposed plan supports both the Authority’s and Division’s goals to improve the viability of North Carolina’s water/wastewater systems while providing a clear roadmap toward de-designation of distressed systems now that American Recovery Plan Act funding is exhausted and the annual number of newly designated distressed LGUs is more predictable. Detailed discussions and action items will be presented during the next Viable Utility Committee meeting.

### **Statutory Requirements of Distressed LGUs**

NCGS 159G-45(b) requires each distressed unit identified under this section to do all of the following:

- (1) Conduct an asset assessment and rate study, as directed and approved by the Authority and the Local Government Commission.
- (2) Participate in a training and educational program approved by the Authority and the Local Government Commission for that distressed unit. Attendance shall be mandatory for any governing board members and staff whose participation is required by the Authority and Local Government Commission. The scope of training and education, and its method of delivery, shall be at the discretion of the Authority and Local Government Commission.
- (3) Develop an action plan, taking into consideration all of the following:
  - a. A short-term and a long-term plan for infrastructure repair, maintenance, and management.
  - b. Continuing education of the governing board and system operating staff.
  - c. Long-term financial management to ensure the public water system or wastewater system will generate sufficient revenue to adequately fund management and operations, personnel, appropriate levels of maintenance, and reinvestment that facilitate the provision of reliable water or wastewater services.
  - d. Any other matters identified by the Authority or the Local Government Commission.

### **Status Report for Distressed Systems**

Division staff have compiled high-level information from Division-funded projects on each distressed LGU's progress through their statutory requirements. Of the 145 distressed systems, 31 (21 percent)<sup>1</sup> have not started on their required VU training, 37 drinking water systems (28 percent) and 31 wastewater systems (23 percent) have not started on their required AIA, 106 systems (73 percent) have not started on their required rate study, and 22 systems (15 percent) have never received funding for the Division's AIA/rate study or merger regionalization feasibility (MRF) grants.

Staff have also employed the Resource Agency Partnership for Water Utilities (RAPWU) technical assistance providers to help fill gaps in this and other information pertaining to the utilities' management, particularly when the Division has not been involved. Through this effort, Division staff will develop a Status Report for and set up a meeting with each distressed LGU to discuss their status in the Viable Utilities (VU) Program. The Division's intent is that the

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<sup>1</sup> Data as of September October 3, 2023.

initial Status Report will reveal many short- and long-term actions each distressed LGU must complete, and these actions will be the basis of their statutorily required Action Plan.

Twenty-six (26) systems have been identified as the Division's highest priority to receive the first iteration of the Status Report due to being designated as D1 (under LGC's fiscal control) or a combination of having not started any of their statutory requirements and not receiving unrestricted directed grant funding in the most recent state budget. Successive groups will receive similarly appropriate levels of engagement by Division staff and RAPWU throughout the first half of 2024 in time for all distressed LGUs to know their standing with the VU Program by the Fall 2024 funding cycle.

### **Action Plan Development**

Division staff recognize that each distressed LGU must first define their baseline technical, managerial, and financial needs for the short term before determining what they can do to improve their long-term viability. Because of the variability in the necessary actions each distressed system may need to perform to become de-designated, Division staff have developed the following list of tasks that, once complete, will constitute a Short-Term Action Plan (STAP). In essence, the STAP consists of the actions the LGU needs to take now based on their progress toward meeting their statutory requirements

Subject to further discussions and input, the STAP will consist of these and/or similar items:

- (1) Develop a plan to fill vacant Technical, Managerial, and Financial positions in the system, including succession planning for filled positions
- (2) Attend VU initial education training for all current staff and establish plan when hiring new staff
  - Complete and adopt an Asset Management Plan (AMP), bring existing efforts up to complete AMP, using the Division's guidance document
- (3) Develop and adopt 10-year CIP based on the AMP
- (4) Perform and implement rate study/financial analysis that covers the entire life cycle costs of the system and 10-year CIP
- (5) Where needed: address Unit Assistance List (UAL) reasons, permit and regulatory requirements (e.g. high priority gravity lines, enhanced monitoring, etc.), operator certifications
- (6) Optional: construction projects for I/I and water loss abatement, energy and water efficiency programs, etc.

After initial STAP efforts, determine whether merging/regionalizing, system reset, or continue on, but differently, is the most viable path. If merger or regionalization is determined as the most viable path:

- (7) Perform MRF study that results in interlocal agreement and/or Memorandum of Understanding (ILA/MOU)

To complete the Action Plan requirement, Division staff currently envision the Long-Term Action and Long-Term Financial Plans (LTAP/LTFP) to consist of implementing the solutions developed and revealed in the STAP. This may include expansion and/or decentralization construction projects, fulfilling the conditions of an MOU to merge, hiring appropriate staff and certified operators, and implementing sufficient technical, managerial, and financial controls in a programmatic manner. Staff will continue discussing internally and will meet with the Viable Utility Committee (VUC) as further input is needed.

### **Division Implementation and Next Steps**

Staff's current plan is to engage with each distressed LGU by June 2024 via a meeting where staff present and discuss the Status Report, in time for the Fall 2024 funding cycle. The 26 previously mentioned LGUs have already started receiving staff's directed attention, and the remaining 120 systems will start to be addressed in groups of decreasing priority in February 2024, with one group each month receiving attention.

Once staff determine the distressed LGU's status, staff will assist the LGU in developing their Short-Term Action Plan (STAP), including in-field technical assistance, engaging with RAPWU, and assisting with funding applications.

In addition to developing formal guidance on the STAP requirements, staff will also continue developing the framework for the LTAP/LTFP requirements and plan to present initial recommendations in successive Authority and/or VUC meetings.