

**State Water Infrastructure Authority**  
**Meeting Date: July 13-14, 2022**  
**Agenda Item R – Update on Public Comments Related to CWSRF and DWSRF Intended Use Plans**

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**Division of Water Infrastructure Staff Report**

**Background**

The US Environmental Protection Agency (EPA) requires the Division of Water Infrastructure (Division) to update its Intended Use Plan (IUP) for the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs. Included within each program's IUP is the Priority Rating System, which contains the points applied by Division staff when an application for funding is evaluated. The Division proposes the Priority Rating System to the EPA each year in the IUP for each State Revolving Fund (SRF) program and submits the IUPs to the EPA as part of the capitalization grant applications. Approval of the Priority Rating System by the Authority is an action item for the July 13-14 SWIA meeting as part of Agenda Item S.

**Summary of the Intended Use Plans**

The following summarized changes to the CWSRF and DWSRF IUPs are to be submitted to EPA with the 2022 SRF Capitalization Grant applications for base SRF funds and for the Bipartisan Infrastructure Law (BIL) General SRF Supplemental funds.

- IUP funding sources expanded to include FY2022 Bipartisan Infrastructure Law SRF General Supplemental Funds allotments.
- Clarify the Division's intent to reserve the right to use set-aside funds for listed activities.
- Update provision to clarify the Division's intent to reserve its right to use unused portions of the set-asides at a later date.
- Reserve the Authority's right to transfer funds between the CWSRF and DWSRF at a later date.
- Clarify that applications are reconsidered in one additional funding cycle.
- Clarify that priority is given to projects that consolidate nonviable systems, resolve issues associated with failed or failing infrastructure, will rehabilitate or replace infrastructure, serve disadvantaged areas, or reduce nonpoint source pollution. The Division generally prioritizes replacement and rehabilitation over building new infrastructure.
- Clarify that priority is given to projects that address emerging contaminants and lead service line replacements in addition to previously stated priorities of implementing regulations, regionalization, resiliency, and addressing contamination or water quality issues.

- Increase maximum loan amount per applicant per funding round to \$25 million for DWSRF and to \$35 million for CWSRF.
- Increased maximum indebtedness from \$100,000,000 to \$200,000,000 per applicant.
- Clarify minimum principal forgiveness (PF) percentages for two funding sources (base SRF and BIL General SRF Supplemental funds).
- Expanded PF eligibility to projects benefiting disadvantaged areas.
- Clarify PF limits for projects benefiting disadvantaged areas.
- Define disadvantaged areas to allow applicants to use a narrative to document need.
- Clarify how PF caps for projects benefiting disadvantaged areas will be exceeded if funds are available.
- Include up to \$1 million in CWSRF funding for a Decentralized Wastewater Treatment System Pilot Program and clarify that funding may bypass a higher priority project.
- Include Build America, Buy America requirements to loans as required by the EPA and federal mandates.
- Include intent to use DWSRF set-asides for inventory of lead service lines, water quality sampling, funding applications, and/or other public engagement in disadvantaged areas.
- Include intent to use CWSRF set-asides for technical assistance to implement the state's Viable Utility program assisting rural, small, and tribal publicly-owned treatment works, and to assist disadvantaged communities in preparing for potential CWSRF projects.
- Use consistent terminology for emerging contaminants.
- Update the Priority Rating Systems for Drinking Water and Wastewater project applications.

Staff's explanation of proposed changes to the Priority Rating Systems will be presented to the Authority as part of Agenda Item S and are not included in this staff report.

### **Responses to Public Comments**

The Division opened the public review period on May 16, 2022. The public comment period closed on June 15. Comments, questions and responses are below. Public comments specific to the Priority Rating Systems will be presented to the Authority as part of Agenda Item S and are not included in this staff report.

#### **BIL Questions**

Comment: IUPs are unclear on how Bipartisan Infrastructure Law (BIL) Funding for emerging contaminants and lead service line removal will be administered.

Response: The 2022 BIL allotments for Emerging Contaminants and for Lead Service Line Replacements are not part of this IUP. A separate public review opportunity will be provided prior to the Department applying for the BIL Emerging Contaminant

and the BIL Lead Service Line Replacement capitalization grants. The proposed revisions to the priority rating system in this IUP include line items for these issues to provide additional priority for projects addressing emerging contaminants and lead service line replacements that are eligible for base SRFs and BIL General Supplemental SRFs only. **No change from Draft IUP.**

Comment: Is it the Division's intent to use this priority rating system for the additional lead service line and emerging contaminant funding?

Response: The priority rating system for BIL Lead Service Line Replacement and BIL Emerging Contaminant funding are not part of this IUP. Separate IUPs for BIL Lead Service Line Replacement and BIL Emerging Contaminant funds, including priority rating systems that may be different from the ones proposed in this IUP, will be developed for these funding sources and will have a separate public review period. **No change from Draft IUP.**

Comment: Under Section 4, does the 2022 BIL money shown in the projected funds table include specific reserves for emerging contaminants issues?

Response: The table in Section 4 was unclear. **Table in Section 4 now more clearly identifies funds from the 2022 BIL General Supplemental allotment.** Does not include reserves from BIL emerging contaminants funding.

Comment: Section 4, paragraph 4 reads: "The Division reserves the authority for BIL inter-SRF transfers and use the authority in later years from subsequent BIL appropriations." It is not clear what this sentence intends to mean. Ought it to read, "The Division reserves the authority to transfer BIL funds between the DWSRF and CWSRF at a later date."?

Response: **The language in Section 4 now reads "The Division reserves the authority to transfer BIL funds between the DWSRF and CWSRF from this year's capitalization grant at a later date and apply it to a future year's capitalization grant."**

#### Decentralized Wastewater Treatment System Pilot Program

Comment: Can the decentralized wastewater treatment system pilot program funding be used to eliminate these failing or failed systems and connect the residents or facilities to a centralized system if one is available?

Response: The funds will be available for project types eligible for SRF funding that address the failed or failing onsite system. **No change from Draft IUP.**

Comment: Encouraged by the pilot program established in section 5.3.4 for decentralized wastewater systems. There is a significant need to provide support to those with immediate on-site issues who may never warrant connection to a utility.

Response: **No change from Draft IUP.**

### Affordability Criteria/Disadvantaged Communities

Comment: In some states, the presence or likely presence of lead or galvanized (requiring replacement) service lines has been deemed to be a disadvantaged community. Will the Division consider this for the purposes of documenting disadvantaged areas for principal forgiveness?

Response: The Division will consider adding the presence of lead or galvanized service lines as an indication of a disadvantaged area or community for the purposes of documenting disadvantaged areas for PF under a separate IUP for the BIL Lead Service Line Replacement funding, which is under development. **No change from Draft IUP.**

Comment: Section 5.3.2.2.3 provides "principal forgiveness for 50% of the project costs of the loan up to \$500,000, limited to project costs benefitting the disadvantaged areas." The phrase, "project costs of the loan" is unclear.

Response: Section 5.3.2.2.3 was unclear. **The section now reads "Project benefiting disadvantaged areas will receive principal forgiveness for 50% of the project costs benefitting disadvantaged areas up to \$500,000".**

Comment: Support the ability of applicants to receive priority for projects that would benefit disadvantaged areas (DAs) within their jurisdiction.

Response: **No change from Draft IUP.**

Comment: Consider important factors such as housing costs, utility costs, socioeconomic stressors, environmental racism, history of discriminatory laws, lack of public participation, and the cumulative impact of these factors when designating disadvantaged communities.

Response: The Division acknowledges that there are many different considerations and metrics that may be applicable to designating disadvantaged communities. The local government unit indicators established in the Affordability criteria are used to assess the local government unit as a whole. However, different criteria, including those above, may be documented by the applicant to claim priority points for projects that benefit disadvantaged areas. **No change from Draft IUP.**

Comment: Consider gradations of financial need when evaluating DAs. Two communities may meet the current definition of a DA, but one community may have greater need because of a higher poverty rate.

Response: The Division acknowledges that there are many different considerations and metrics that may be applicable to designating disadvantaged communities and providing additional subsidy. The Priority Rating System provides incrementally higher prioritization to applicants that have a greater number of indicators reflecting economic constraints. The Division will continue to evaluate the

recipients' funding and additional subsidy to assure the funds are going to communities most in need of support. **No change from Draft IUP at this time.**

Comment: Commend the Division for its commitment to helping distressed utilities. We think using the technical assistance set aside in the CWSRF to provide support within the Viable Utility program will prove valuable for the applicants who are most in need.

Response: **No change from Draft IUP.**

Comment: Commend the inclusion of qualitative and narrative measures of what constitutes a disadvantaged community in section 5.3.2.2.3. This will allow for greater consideration of communities in need.

Response: **No change from Draft IUP.**

#### Additional Subsidy

Comment: For Targeted Interest Rates, please verify consideration has been given to disadvantaged areas receiving a 0% interest loan. While the eligible principal forgiveness (PF) is 50% for these areas, will they also be able to benefit from the lowest possible interest rate?

Response: Per Section 5.3.1.7, projects eligible for PF will receive targeted interest rates based on the percent PF they are eligible for. Projects serving disadvantaged areas are eligible for 50% principal forgiveness and a 1% reduction of the interest rate. **No change from Draft IUP.**

Comments: For Principal Forgiveness, will the Disadvantaged Area be considered separately from affordability? It is not clear in 5.3.2.2 if Affordability will be the next criteria to be considered or Disadvantaged Area. If the affordability criteria yields a 25% PF but the project is to serve a disadvantaged community, 50% PF, will the project be given the higher amount of PF?

Response: Projects will be given the greatest amount of PF they are eligible to receive. **No change from Draft IUP.**

#### Miscellaneous Criteria

Comment: We agree with the Division's decision in section 5.1 to reconsider applications that were not selected from the previous funding cycle in the current round of funding. This will significantly reduce the burden of reapplication on utilities.

Response: Reconsideration of projects is required by GS 159G. Applicants are also encouraged to resubmit an application to provide additional documentation or to strengthen their application based on their application review. **No change from Draft IUP.**

- Comment: Applaud the inclusion of “resiliency” as a category of projects to prioritize. While we suggested above a threshold for resilience, we are encouraged to see commitment to its prioritization in the meantime.
- Response: The comment will be shared with the State Water Infrastructure Authority. **No change from Draft IUP.**
- Comment: We believe establishing a resilience threshold would greatly benefit not only the applicants, but also their customers, the Division, and the state.
- Response: Resiliency is not a requirement for projects to be eligible for SRF funds. The Division supports existing prioritization points in Category 2.N that provides priority to projects increasing resiliency and redundancy. **No change from Draft IUP.**
- Comment: Will there be a public input session regarding the priority rating systems such as those provided as part of previous solicitations for Intended Use Plan public input? We would like to request a formal public hearing/meeting before closing the public review opportunity to answer questions and further describe the revisions to the IUP and priority rating systems so that we have the opportunity to provide complete and relevant comments.
- Response: The Division previously considered the need for a public meeting concerning the subject IUP. The Division hopes that the response to comments helps clarify questions stakeholders have on the intended use of the base SRF funds and BIL SRF General Supplemental funds. The Division will continue to provide opportunities to engage with stakeholders to answer questions and receive feedback from stakeholders on all of its funding programs. **No change from Draft IUP.**
- Comment: Section 5.3.5.3 states Build America, Buy America requirements will apply to loans as required by US EPA and by Federal mandates. Will there be any consideration, with the current continued supply chain issues, to gain additional authority from EPA to waive these requirements (i.e. Non-Availability, Unreasonable Cost Waivers)?
- Response: The Division recognizes the current supply chain issues and interest in obtaining waivers to Build America, Buy America requirements. Waivers are being pursued by EPA on behalf of the SRF program. More information can be found on the EPA website: [Build America, Buy America \(BABA\) | US EPA](#). **No change from Draft IUP.**
- Comment: For Miscellaneous Criteria, 5.3.5.2 states American Iron and Steel Provisions apply to the funds. Is this in addition to Build America, Buy America requirements or instead of?
- Response: Both American Iron and Steel and Build America, Buy America requirements will apply to projects. **No change from Draft IUP.**

- Comment: Does the Division anticipate separating out some funds to match the new stormwater grant funding? Either green reserve or regular loan funds.
- Response: The 2022 IUP does not separate out funds to support the new American Rescue Plan Act-funded stormwater project program. **No change from Draft IUP.**
- Comment: DWSRF Appendix A: Does the Division intend a difference between "may" and "will" in Appendix A, Section C, items "c." and "d."?
- Response: The difference in the language was unintended. The intent was to give the Division the option to use funds for the listed set-aside activities. **The IUP is updated to provide the Division the intended flexibility.**
- Comment: Page 7 mentions "emerging contaminants" and Page A-3 mentioned "emerging pollutants." Is the Division using the terms emerging compound, emerging contaminant, and emerging pollutant synonymously? Please confirm if different definitions for pollutants, contaminants, and compounds will be used. EPA uses and defines the term "emerging contaminant" in the March 8th Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law Memorandum in Attachment 1, Appendices B and C.
- Response: **The IUP is updated to use the term emerging contaminant(s).**
- Comment: Section 5.3.1.4 states the maximum DWSRF loan amount will be \$20 million per applicant for each funding round (\$30 million per applicant for CWSRF loans). With the additional supplemental BIL funding, would the maximum loan amount be raised?
- Response: The Division balances the needs of larger projects, where cost increases are driving a need to raise loan amounts, and the need to ensure that SRF funds are available to many applicants across the state, most of which seek smaller loan amounts. With additional funding in mind, **the IUP has been updated to reflect that the DWSRF loan amount will be \$25 million per applicant for each funding round, and the CWSRF loan amount will be \$35 million per applicant for each funding round.** Section 5.3.1.6 provides the Division flexibility to exceed the per applicant limit in Section 5.3.1.4 if funds are available. The funding caps will continue to assure that the SRF funds are distributed to a larger number of projects.
- Comment: We would like NC state government to either create a state account to deposit some of the funds in an account all nonprofits (and tribes) can apply to and can draw from; or negotiate a carve-out for these specific funds from their existing account structure.
- Response: NC GS 159G establishes that local governments and nonprofit water corporations are eligible to apply for both SRF funds, and investor-owned

drinking water corporations are eligible to apply for DWSRF. The comment to expand this eligibility is outside of the scope of the IUP and would require changes to the state statute. The comment has been shared with Department management. Note that set-asides from the SRFs are available for other entities for specific purposes as described in the IUP. **No change from Draft IUP.**

Comment: Suggest adding to section 3.1, Overall CWSRF Program Goals, language about benefiting “needy” or “disadvantaged” systems. The corresponding section in the Drinking Water State Revolving Fund goals makes mention of “targeting the most needy systems.” While this goal is reflected in many other facets of the program, we believe an explicit reference will help to inform the continued work on the CWSRF.

Response: The Division agrees with the need to improve consistency between the CW and DW SRF program goals. **Section 3.1 of the CWSRF IUP is updated to reference the advancement of the water quality goals of the Clean Water Act while targeting the most needy systems.**

### Set-Asides

Comment: Apart from the funds noted in the state set-aside, will any of the BIL Lead Service Line Replacement funds be available for entities to access for inventory development? If so, will there be any utility size limitations?

Response: This IUP is for the base SRF and the BIL General Supplemental SRF, not the BIL Lead Service Line Replacement funding. Additional details on BIL SRF funds for Lead Service Line Replacement is under development by the Division and will be covered under a separate IUP. For base DWSRF and BIL General Supplemental DWSRF funding, set-asides will be used to assist with inventory development as described in Appendix A. **No change from Draft IUP.**

Comment: Appendix A Set-Aside, Section D, Local Assistance, where can utilities access these programs?

Response: The Division is reserving the right to use set-aside funds for allowable uses, including local assistance. Additional public outreach and information will be provided as the local assistance funding opportunities are developed. **No change from Draft IUP.**

Comment: Set-asides be amended to include grant opportunities for basin wide water management groups to support 1.The development and maintenance of long-term water resource plans, 2. Water loss assessments and mitigation.

Response: Given the need to develop project pipelines to apply for the capitalization grants for BIL Emerging Contaminants and BIL Lead Service Line Replacement funding, the Division is prioritizing maximizing the use of additional set-asides from the base SRFs and BIL General Supplemental SRFs this year to conduct water sampling and lead service line inventorying. In future years, more set-aside



funding may be made available in the base SRFs and BIL General Supplemental SRFs for additional projects. This comment will be considered at that time. **No change from Draft IUP.**

Comment: The IUP be amended to include grants to basin-wide water management groups for developing and maintaining long-term water resource plans. Water Resources Plans are comprehensive, multi-phase, multi-year efforts with an anticipated cost of more than \$500,000 to complete. Providing some of the Local Assistance and Other State Programs set aside (15% of the capitalization grant) for water resource planning on a regional basis offers a comprehensive approach benefitting state

Response: Given the need to develop project pipelines to apply for the capitalization grants for BIL Emerging Contaminants and BIL Lead Service Line Replacement funding, the Division is prioritizing maximizing the use of additional set-asides from the base SRFs and BIL General Supplemental SRFs this year to conduct water sampling and lead service line inventorying. In future years, more set-aside funding may be made available in the base SRFs and BIL General Supplemental SRFs for additional projects. This comment will be considered at that time. **No change from Draft IUP.**

Comment: Water loss assessments are a key tool to ensure both efficient use of our water resources (e.g., understanding leakages also known as real losses) and effective financial management of the utility (e.g., accounting of water inaccuracies also known as apparent losses). While a basic water loss assessment is required by North Carolina, these assessments do not follow the American Water Works Association's (AWWA) M36 Water Audits and Loss Control Programs standards and may not fully address business aspects of the M36 standard. Supporting regional water loss reduction efforts will expand the DWSRF's support for small utilities and build on the North Carolina water loss pilot previously funded by the DWSRF.

Response: Given the need to develop project pipelines to apply for the capitalization grants for BIL Emerging Contaminants and BIL Lead Service Line Replacement funding, the Division is prioritizing maximizing the use of additional set-asides from the base SRFs and BIL General Supplemental SRFs this year to conduct water sampling and lead service line inventorying. In future years, more set-aside funding may be made available in the base SRFs and BIL General Supplemental SRFs for additional projects. This comment will be considered at that time. **No change from Draft IUP.**

Comment: Pleased to see that the Division plans to provide assistance for water quality sampling and lead service line inventory. We are interested to know whether the Division anticipates the amount of funding available (4 percent of capitalization grants) will be sufficient for the needs of communities across the state for these

activities. If not, we would like to know the Division's plan for prioritizing assistance for the communities that are most in need.

Response: The IUP establishes the intent of the Division is utilize set-aside funds for these activities and reserve the right to use the maximum amount allowed for the approved set-aside uses. Strategies for providing assistance to communities in need of funds to conduct water quality sampling and lead service line inventory are being developed. Additional funding will be made available under the BIL Emerging Contaminants and the BIL Lead Service Line Replacement funding, which are not part of the scope of this IUP. **No change from Draft IUP.**

### Lead Service Line Replacement

Comment: Section 2(1) of Article V of the North Carolina Constitution is generally referred to as the public purpose limitation. This portion of the state's constitution has been interpreted to mean that no public funds can be used to solely benefit a private citizen or private property. Based on this, will there be some type of state action that will allow entities to use DWSRF to replace the private-side portion of a lead or galvanized (requiring replacement) of a service line to fully comply with the Lead & Copper Rule Revisions? Or will there be stipulations placed on the use of SRF funds for private-side replacements to align with other programs (e.g., CDBG LMI Hook-Up Program)?

Response: To constitute a public purpose under the NC Constitution (Art V, Section 2), the activity 1) must be reasonably connected to a legitimate governmental purpose and 2) the ultimate benefit must be to the public, rather than an individual or private entity.

The purpose of these funds is to replace infrastructure so that the public has safer drinking water, which is a legitimate governmental purpose squarely rooted in the government's historical role in infrastructure and the public welfare.

G.S. 159G-35 states that federal law determines whether a project is eligible for a loan or grant from the DWSRF and EPA has repeatedly stated that complete service line replacement is an eligible DWSRF expense regardless of ownership or pipe material.

The funds primarily or ultimately benefit the public regardless of whether some portion of the service line is privately owned. The benefits to the public include, but are not limited to, safer drinking water, reduced risk from partial replacements damaging lead pipe casings, reduced public health costs, etc.

To the extent that the comment is raising a concern about local governments' authority to conduct work on private property, the Division cannot comprehensively address all local governments' ordinances. However, the Division notes that there are several funding programs that involve local government work on private property, including CDBG-I LMI (rehabilitation

assistance) and the NC Weatherization Assistance Program. **No change from Draft IUP.**

Comment: Will the Division allow a find it/fix it approach to lead service line replacement if an entity has enough documentation from its inventory to indicate that lead or galvanized (requiring replacement) service lines are likely in specific areas?

Response: “Find it/Fix it” approach projects are eligible for funding through the DWSRF program. However, this question will likely be better addressed when the BIL Lead Service Line Replacement fund IUP is prepared and released for public review. **No change from Draft IUP.**

Comment: Will lead service line replacement project type be a stand-alone project? Does this include inventory/investigation and identification of lead service lines?

Response: Lead service line replacement projects are eligible for funding from base SRF and the BIL General Supplemental SRF programs covered by this IUP. Additional details on BIL SRF funds for Lead Service Line Replacement is under development by the Division and will be covered under a separate IUP. **No change from Draft IUP.**