



August 29, 2022

Casey Sweeney, Program & Policy Analyst-Advisor
Wisconsin Department of Natural Resources
Division of External Services, Community Financial Assistance
Via email

RE: Comments on the Draft July 2022 Clean Water Loan Program Intended Use Plan for FFY 2022 Funds for the SFY 2023 Funding Cycle

Dear Mr. Sweeney,

The Environmental Policy Innovation Center (EPIC)¹, on its own behalf and on behalf of the co-signatories listed below, offers the following comments on the [Draft July 2022 Clean Water Loan Program Intended Use Plan for FFY 2022 Funds for the SFY 2023 Funding Cycle \(Draft IUP\)](#) to the Wisconsin Department of Natural Resources (WDNR) Division of External Services, Community Financial Assistance.

Our comments focus on equity and resiliency. We commend recent steps WDNR has taken to make Wisconsin's SRF policies more equitable, and recommend further policy reforms needed to ensure that assistance from Wisconsin's Clean Water Loan Program is equitably distributed and, moreover, helps to redress decades of underinvestment in historically overburdened communities. These further reforms are needed for the CWLP to realize its goals to **"examine program policies through an equity and environmental justice lens and make improvement where possible"** and to **"provide additional economic assistance in the form of principal forgiveness, with the highest amounts allocated to those applicants with the greatest financial need."** We also commend the innovation demonstrated by the CWLP's pilot programs, and advocate further measures needed to help communities build their climate resilience, in line with the CWLP goal to **"implement policy changes that encourage municipalities to make their wastewater treatment systems and stormwater systems more resilient, sustainable, and adaptive to climate change impacts."**

These comments present our analysis of key policies proposed in the Draft IUP and recommendations for further improvement. **Section 1** assesses WDNR's allocation of funds to meet community water infrastructure needs. **Section 2** assesses policies proposed to determine eligibility for principal forgiveness (PF). **Section 3** assesses proposed PF distribution policies proposed. **Section 4** recommends measures to make progress towards new goals for the CWLP relating to assistance for low-income rate payers and workforce development. **Section 5** recommends new goals and policies to incentivize green

¹ The [Environmental Policy Innovation Center \(EPIC\)](#) is a non-profit think tank working nationwide to build policies that deliver spectacular improvements in the speed and scale of environmental progress. Equitable access to and distribution of State Revolving Funds (SRFs), expediting the removal of lead service lines, and encouraging green infrastructure and other nature-based solutions to water problems are among EPIC's focus areas of work.

stormwater infrastructure (GI) and other nature-based solutions (NBS) to water quality challenges. **Section 6** recommends that the pilot program be expanded to support innovative projects for distributed wastewater treatment systems as an alternative to regionalization. **Section 7** comments on WDNR's utilization of set-aside funds for administration and technical assistance (TA). **Section 8** seeks further clarification of WDNR's ready-to-proceed standards for CWLP projects, particularly in relation to public participation in the development and vetting of proposed projects. **Section 9** discusses public notice and input to policies determined in the IUP.

The **key findings and recommendations from our analysis of the Draft IUP** are as follows:

Making Eligibility for Principal Forgiveness More Equitable

- The alignment of affordability criteria across the SDWLP and CWLP, including indicators relating to the prevalence and severity of poverty, unemployment rates, and population trends, are welcome developments.
- WDNR should modify how it assesses population decline, to award points for communities that have experienced substantial population decline in recent decades as well as for communities anticipating substantial future declines in population.
- WDNR should consider incorporating factors relating to environmental burdens and risks, social determinants of health (SDOH), and social vulnerability to the affordability criteria.
- WDNR's proposal to scale the percentage of project costs for which a community can receive PF, so that communities with higher PF scores are eligible for a greater percentage of costs as PF, represents a thoughtful and equitable approach to PF eligibility. To ensure the integrity of this methodology for awarding general PF, it is essential that this methodology is not undermined by flat caps on the amount of PF an applicant can receive each year.
- WDNR should revise the spatial boundaries for defining disadvantaged communities (DACs) and apply the affordability criteria to areas that will directly benefit from the proposed project, such as for green infrastructure installed in neighborhoods that would meet the state's affordability criteria, rather than considering the entire service area of the applicant water system.
- WDNR should require projects to meet the minimum requirement for general PF (i.e., a PF point score of at least 60) to be eligible for any "Priority Principal Forgiveness" including Regionalization PF and Energy Efficiency PF as well as Phosphorus Reduction PF.
- WDNR should assess the impact principal forgiveness awards have in relation to communities' likelihood of applying for CWLP assistance and ability to proceed with needed water infrastructure projects.

Making the Distribution of Principal Forgiveness More Equitable

- **To achieve equity, it is essential to ensure that not only eligibility for PF is equitably defined, but also that the actual distribution of PF results in equitable outcomes.** To avoid an inequitable distribution of principal forgiveness, WDNR should modify the Draft IUP to avoid the use of flat caps on general principal forgiveness, which have the effect of undermining the PF eligibility assessments determined by Tables 1-7.

- To the extent that flat caps remain on PF, we are pleased to see the cap increased from \$750,000 to \$2,000,000 per applicant.

New CWLP Goals Relating to Workforce Development and Water Affordability

- We welcome WDNR’s articulation of goals for the CWLP relating to equitable workforce development and water affordability.
- We urge WDNR to incentivize implementation of these goals by awarding bonus PERF points and bonus PF to water systems that take meaningful steps to implement these goals.

Incentivizing Green Infrastructure and other Nature-Based Solutions to water quality challenges

- WDNR should identify the promotion of green infrastructure and other nature-based solutions for water quality challenges as a short-term goal for the CWLP.
- WDNR should reserve 10% of Wisconsin’s base and supplemental federal CWSRF capitalization grants for green infrastructure projects, on top of the 10% already reserved for projects meeting the federal Green Project Reserve mandate.
- WDNR should add another category of “priority PF” for GI projects situated in neighborhoods that meet the affordability criteria.
- We commend the CWLP pilot program enabling 0% loans to projects implementing Wisconsin’s innovative provisions for water quality trading (WQT) projects to reduce phosphorus from agricultural runoff and other non-point sources, and other non-traditional approaches to meet Wisconsin Pollution Discharge Elimination System (WPDES) permit requirements.
- WDNR should expand the CWLP’s pilot program to provide 0% SRF loans as matching funds for GI projects developed and partially funded by non-profit entities or other third parties and sponsored by CWLP-eligible applicants for CWLP funding.
- WDNR should also designate GI projects proposed by CWFPP applicants, who have not previously implemented GI projects for stormwater management, as pilot projects eligible for 0% interest.

Enabling Innovative, Cost-Effective, Climate-Resilient Alternatives to Regionalization

- WDNR should expand the CWLP pilot program to include innovative projects for distributed wastewater treatment projects.

Setting Aside Funds from Federal CWSRF Grants for Administration and Technical Assistance

- We support WDNR’s proposal to set aside the maximum allowed from federal CWSRF capitalization grants for administration, to maintain and build state capacity to deliver the CWLP program, including in particular innovative policies and programs to ensure progress towards the program’s equity and resiliency goals.
- WDNR should also set aside the maximum allowed from federal CWSRF capitalization grants to provide technical assistance to small and disadvantaged communities.
- WDNR should reconsider how it plans to expend set-aside funds for technical assistance. This should include clarifying goals and principles for the CWLP technical assistance program; developing a plan for utilization of increased funds for technical assistance available through the supplemental CWSRF funds from the IJJA, and engaging non-profits and other third-party technical assistance providers (rather than just new WDNR staff) to deliver technical assistance.

Clarifying Readiness-to-Proceed Standards

- WDNR should provide further information on the nature and extent of readiness-to-proceed requirements relating to public participation in the development and vetting of projects, and how these are assessed.
- WDNR should provide mechanisms whereby impacted residents or other stakeholders could provide information to WDNR relevant to its assessment of whether public participation criteria have been satisfied.

Expanding Opportunities for Stakeholder Scrutiny and Feedback on Policies Adopted through the IUP

- WDNR should continue the practice of providing and posting webinars on Draft IUPs.
- WDNR should lengthen the period for offering comments on the Draft IUP to 60 days, to allow stakeholders more time to formulate and vet comments.
- WDNR should convene an on-line public hearing on Draft IUPs.

1. WDNR takes several positive steps to allocate and leverage CWLP funds to meet the needs of Wisconsin communities.

We commend WDNR for allocating the maximum amounts allowed from Wisconsin's federal CWSRF grants for additional subsidies, for setting aside the maximum allowed from FY2022 CWSRF grants for administration, and for setting aside close to the maximum allowed from the base grant for technical assistance. We urge WDNR to set aside the maximum allowed for technical assistance from the supplemental CWSRF grant, too, and to bank these funds to provide additional technical assistance for disadvantaged communities in line with the objectives and principles set out in section 7.

We also commend Wisconsin's practice of leveraging CWLP funds to expand available funding in order to enable the CWLP to offer financing to all qualifying projects, at least at the current level of demand.

2. WDNR's proposed methodology for eligibility for "general" principal forgiveness is thoughtful, balanced, and aimed to achieve a more equitable distribution of principal forgiveness across Wisconsin communities.

Currently, wastewater and stormwater services remain affordable for most Wisconsinites. Given the degree to which the burden of paying for water infrastructure ultimately falls on local ratepayers, however, the trade-off some water systems make to keep water rates affordable – particularly very small systems and/or those serving low-income communities – is that much-needed water infrastructure repairs and upgrades remain unaddressed. To meet these needs, small and less affluent communities require additional subsidies in the form of grants or principal forgiveness. Moreover, these subsidies must be provided at a level that will enable the water system to undertake water infrastructure projects while keeping rates affordable.

The methodology for determining eligibility for "general PF" – that is, eligibility for principal forgiveness based upon financial need – proposed by WDNR in the Draft IUP is comprised of two parts. First, the

methodology applies weights to a number of relevant factors and scales to award PF points to CWLP applicants per Tables 1-6 in the Draft IUP. Second, the methodology allows water systems serving communities that are relatively more disadvantaged, as indicated by their higher PF scores, to receive a larger percentage of their project costs as PF, per Table 7. We discuss each of these components of the revised methodology in turn and recommend further reforms that would make eligibility for general PF more equitable.

a. The proposed methodology to determine eligibility for general PF applies appropriate weights to a number of relevant factors to award PF points.

WDNR has proposed six tables indicating PF points communities could receive based upon community size (Table 1), community median household income (MHI) relative to the state MHI (Table 2), poverty rates (Table 3), population trends (Table 4), county unemployment (Table 5), and lowest quintile income (LQI) (Table 6).²

Factors proposed

We support WDNR's proposed alignment of affordability criteria across the SDWLP and CWLP and inclusion of poverty data and unemployment rates.

We also support expanding the point scale for awarding PF points for population trends to include more tiers, as well as doubling point values compared to past IUPs, to reflect and retain the criterion's significance in the methodology. We contend, however, that WDNR should award points based on significant population loss over recent as well as future decades.

It makes sense to consider population decline in this context because communities with a declining population have a declining base of ratepayers to pay for maintaining and upgrading water infrastructure. The proposed methodology awards points to communities for which a population decline of at least 5% is anticipated over the next 20 years. Using the current year as the baseline for awarding PF points for population decline presents an incomplete picture of the relationship between population decline and community capacity to pay for water infrastructure needs, however.

In addition to awarding PF points to communities anticipating a *future* decline in population, the methodology should award points where the number of residents and businesses served by the water system has significantly declined over *recent* decades. The decades following World War II (1950s – 1960s) saw major investments in water infrastructure in the United States. These water systems were built to serve burgeoning post-war populations and water-intensive industries. In subsequent decades, however, rustbelt cities like Milwaukee experienced substantial population declines as suburbs and exurbs surrounding these cities grew. These population shifts coincided with racist housing practices. For example, the City of Milwaukee experienced a 22% population decline from 741,324 in 1960 to

² See Wisconsin Department of Natural Resources (WDNR). (2022) *Clean Water Fund Program (CWFP) State Revolving Fund: INTENDED USE PLAN for EPA FFY 2022 CAPITALIZATION GRANT for funding during STATE FISCAL YEAR 2023*. Madison, WI: WDNR, pp 14-16. Available at https://dnr.wisconsin.gov/sites/default/files/topic/Aid/loans/intendedUsePlan/CWFP_SF2023_IUP.pdf

577,222 in 2020. At the same time, many of Milwaukee’s water-intensive industries also left the city, resulting in a substantial decline in industrial water ratepayers. Such shifts require remaining residents to pay for the maintenance and upgrading of an oversized water system that is also several decades older than suburban systems in the region.

Relative weight and point scales for proposed factors

WDNR proposes to align the relative weight accorded to community size and economic indicators with the relative weight WDNR has accorded to these factors for PF distribution in prior SDWLP and CWLP IUPs. That is, roughly one-third of available PF points relate to community size and roughly two-thirds to economic factors. We agree with the relative weight accorded to these factors in the proposed methodology.

We are concerned that the thresholds and scales for the factors proposed are overbroad, however. This poses a risk that substantial amounts of general principal forgiveness will be distributed to communities that are only moderately disadvantaged, to the detriment of communities that are more severely disadvantaged as assessed by the proposed methodology set out in Tables 1-6. This risk will only be mitigated if general principal forgiveness is distributed in accordance with Table 7 without the imposition of arbitrary flat caps, as explained further in section 2b and section 3.

b. The very broad point ranges provided in Tables 1-6 are only acceptable if PF is distributed in accordance with Table 7, whereby applicants with higher PF scores receive a higher percentage of their project costs as PF.

We support the use of sliding scales in Tables 1-6 to award PF points. Sliding scales allow for a number of factors indicating various kinds of disadvantages to be weighed together. This approach also avoids sharp cut-off lines between communities deemed eligible for PF versus those deemed ineligible.

In the interest of allowing a wide set of Wisconsin communities to score PF points, WDNR proposes to award PF points to communities with an MHI as high as 126% of state MHI and poverty rates as low as 8% of families with income below 200% of the federal poverty level. In the [U.S. EPA’s Memorandum on the Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law](#), U.S. EPA recommends that, when using MHI as an indicator, disadvantaged communities should be defined as communities with an MHI <80% of the state MHI. When considering poverty rates, EPA recommends a threshold of >30.9% of the population living under 200% of the federal poverty level. The scales proposed by WDNR for Tables 2 and 3 allow communities with far less severe financial hardship to be awarded some PF points.

Allowing PF points for communities with an MHI up to 126% of the state MHI or poverty rates as low as 8% of families with income below 200% of the federal poverty level may result in a set of “disadvantaged communities” that is overly broad and inconsistent with U.S. EPA guidance. Whether or not Wisconsin’s *distribution* of PF using these scales would be overbroad, however, will depend on the scales defined in

Table 7 as well as on how communities are ranked for the distribution of PF and any annual caps imposed on how much PF each community can receive.

We strongly support scaled eligibility for PF as indicated in Table 7.³ **To ensure the equitable distribution of PF, WDNR should adhere to Table 7 when allocating PF, without the imposition of flat caps.**

c. WDNR should revise the spatial boundaries for defining disadvantaged communities to assess affordability criteria in relation to areas that will directly benefit from the proposed project, rather than the entire service area of the applicant water system.

Wisconsin has typically considered the entire area served by a water system when applying affordability criteria. Instead, WDNR should consider assessing economic indicators (i.e., Tables 2, 3, and 5 in the Draft IUP), as well as any environmental risk and burden, social determinants of health, or social vulnerability indicators added to the affordability criteria per our recommendation in section 2d, for the census tracts most directly served by the proposed project. Affordability criteria should be assessed on a census-block scale, particularly for green stormwater infrastructure (GI) and other climate resiliency projects, as these types of projects can have very localized impacts, as well as providing generalized benefits for the watershed as a whole by reducing stormwater runoff into local waterways.

Many large metropolitan water systems serve neighborhoods with high poverty rates as well as relatively affluent communities. When economic or other indicators to assess disadvantage or affordability are averaged out across the entire area served by a water system, it can have the effect of excluding underserved, low-income urban neighborhoods from accessing SRF principal forgiveness and compound historic patterns of disinvestment. The use of more flexible spatial boundaries that enable PF to be targeted to underserved communities within larger metropolitan water systems would result in more equitable outcomes. The U.S. EPA has recognized in its [March 2022 BIL Implementation Memo](#) that this practice is consistent with both the Safe Drinking Water Act and the Clean Water Act.

d. WDNR should consider awarding additional PF points relating to environmental risks, environmental burdens, social determinants of health, and social vulnerability indicators.

Particularly for projects with substantial place-based benefits, WDNR should consider expanding affordability criteria to include environmental risks, environmental burdens,⁴ social determinants of

³ WDNR, *Clean Water Fund Program (CWFP) State Revolving Fund: INTENDED USE PLAN for STATE FISCAL YEAR 2023*, pp 15.

⁴ Environmental risks are defined as the potential for harmful effects from environmental hazards and burdens. Risk indicators are more forward looking, while burdens are indicators that look at things that are affecting the health and quality of life of communities in the present. Environmental risks and burdens most relevant to the CWLP include proximity to wastewater discharge, proximity to National Priorities List sites (i.e., Superfund sites), flood plain projections, proximity to an impaired water body, percentage of failing decentralized water systems, and groundwater contamination.

health,⁵ and social vulnerability indicators,⁶. New tools for identifying communities impacted by such factors, including [US EPA's EJ](#) and [CEJST Screening Tools](#) and the [Wisconsin Environmental Equity Tool \(WEET\)](#) make the incorporation of such factors into program policies and delivery feasible.

e. WDNR should require projects to meet the affordability criteria to be eligible for any “Priority Principal Forgiveness”

The Draft IUP proposes to award “priority principal forgiveness” to incentivize a number of prioritized types of projects including regionalization, phosphorus reduction, and energy efficiency projects. Regionalization and energy efficiency projects would not need to meet the state’s affordability criteria in order to be eligible for “priority PF.” WDNR notes that these projects do not need to meet affordability criteria to be eligible to receive principal forgiveness because federal law allows the use of additional subsidy for projects that promote sustainability.

Regardless of whether federal law requires such projects to meet affordability criteria to receive PF, however, WDNR should still require “priority PF” projects to meet the state’s affordability criteria (i.e., at least 60 PF points, per Tables 1-6 in the Draft IUP). The long-term financial benefits of regionalization and energy efficiency projects should be sufficient to motivate water systems that do not meet the affordability criteria to pursue these projects. Moreover, **because WDNR proposes to distribute regionalization and energy efficiency PF before any general PF awarded on the basis of financial need, there is a risk that relatively affluent communities could gobble up available PF if priority PF projects are not required to meet the affordability criteria. Requiring all priority PF projects to also meet**

⁵ Social determinants of health (SDOH) are non-medical factors in the environments where people are born, live, learn, work, play, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks. See U.S. Department of Health. (2022) *Social Determinants of Health* [Online]. <https://health.gov/healthypeople/objectives-and-data/social-determinants-health>. Research shows that SDOH can be more important than health care or lifestyle choices in influencing health, with many studies suggesting that SDOH account for between 30-55% of health outcomes. See: World Health Organization. (2022) *Social Determinants of Health* [Online]. https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1. There are five domains within SDOH: economic stability, education access and quality, health care access and quality, neighborhood and built environment, and social community context. The County Health Rankings & Roadmaps by the University of Wisconsin outlines a range of different factors that contribute to health outcomes to determine the health of counties nationwide. See: University of Wisconsin, County Health Rankings and Roadmaps. County Health Rankings [Online]. Available at <https://www.countyhealthrankings.org/explore-health-rankings>

⁶ Social vulnerability refers to a variety of factors that have potential negative effects on a community’s ability to prevent human harm and loss in the face of external stressors. Such stresses include natural or human-caused disasters, or disease outbreaks. The Social Vulnerability Index (SVI) is a tool that the Center for Disease Control (CDC) uses to determine the social vulnerability of every census tract, in order to help public health officials and local planners better prepare for and respond to emergency events like hurricanes, disease outbreaks, or exposure to dangerous chemicals. See: Agency for Toxic Substances and Disease Registry. *CDC/ATSDR SVI Frequently Asked Questions (FAQ)* [Online]. Available at https://www.atsdr.cdc.gov/placeandhealth/svi/faq_svi.html. The themes and social factors included in SVI are: socioeconomic status (below poverty, unemployed, income, no high school diploma); household composition & disability (aged 65 or older, aged 17 or younger, older than age 5 with a disability, single-parent households); minority status & language (minority, speak English “less than well”); housing type & transportation (multi-unit structures, mobile homes, crowding, no vehicle, group quarters).

affordability criteria is essential to reconcile the CWF goal to “provide additional economic assistance in the form of principal forgiveness with the highest amounts allocated to those applicants with the greatest financial need.”

f. WDNR should assess the impact principal forgiveness awards have in relation to communities’ likelihood of applying for CWLP assistance and ability to proceed with needed water infrastructure projects.

Per Table 7 of WDNR’s proposed methodology, some communities would receive a fairly small percentage of project costs as general PF. WDNR should assess whether small PF awards influence the applicant’s ability and willingness to proceed with needed water infrastructure projects. The agency should also assess whether projects that are eligible for relatively large amounts of PF per Tables 1-7, but do not receive the level of PF for which they are eligible due to their ranking on the Project Priority List or flat caps imposed on PF, are unable to proceed with needed water infrastructure projects.

The objective of CWSRFs is to provide financial resources to enable communities to implement water infrastructure projects needed to protect our waterways. Communities that are only moderately disadvantaged may have sufficient fiscal capacity to repay SRF loans and thus have a relatively less urgent need for principal forgiveness.⁷ While any community will, of course, appreciate even a small award of PF, providing a relatively small portion of projects costs as PF may not have much influence on whether or not needed projects can and will be implemented in moderately disadvantaged communities. There is a real risk, however, that communities with a high degree of financial hardship or vulnerabilities will not be able to finance water infrastructure projects using SRF loans alone without raising water rates to unaffordable levels.⁸ If sufficient PF is not made available for communities with the highest PF scores, the SRFs will fail to fulfill their objectives.

To assess whether the levels of PF awarded per the tiers laid out in Table 7 are appropriately set to fulfill CWSRF objectives of enabling communities to install needed water infrastructure, WDNR should systematically assess the real-world impacts of its policies for PF eligibility, ranking for the distribution of PF, and PF caps, and adjust policies proposed in future IUPs as needed.

⁷ Hansen, K., Hammer, B. (2022) [Forthcoming]. ‘Clean Water State Revolving Fund Equity Analysis.’ Environmental Policy Innovation Center.

⁸ For a further discussion of the usefulness of MHI and poverty rates, respectively, to determine the equitable distribution of SRF loans and grants/principal forgiveness. See Hansen, K., Hughes, S., Paine, A., and Polidori, J.. (2021) ‘Drinking Water Equity: Analysis and Recommendations for the Allocation of the State Revolving Funds.’ Environmental Policy Innovation Center. Available at https://static1.squarespace.com/static/611cc20b78b5f677dad664ab/t/614ce18c71125612978901b5/1632428438124/SRFs_Drinking-Water-Analysis.pdf

3. Imposing a flat cap on the amount of general PF each community can receive unjustly undermines more equitable outcomes that would be dictated by the scaled PF eligibility determined by Tables 1-7.

In the past, Wisconsin has imposed a flat cap of \$750,000 per year on the amount of PF each community can receive from the CWFPP. WDNR proposes to increase this cap to \$2 million per year. **While the increase in the cap is a welcome development, the proposed policy is still problematic because it would still impose a flat cap on all CWLP applicants regardless of the relative size of the community served by the water system; the cost of the proposed project(s); the severity of the community's unmet water infrastructure needs; or whether, without further subsidization, the water system could afford to undertake the proposed project(s) without raising water rates to unaffordable levels.**

Tables 1-6 are scaled to award more PF points to communities assessed to be relatively more disadvantaged. **Flat caps have the effect of unjustly undermining the PF eligibility determinations resulting from Tables 1-6**, because under flat caps communities with relatively low PF scores could receive the same amount of PF as communities with much higher PF scores. **Flat caps also undermine Table 7**, which provides that communities with higher PF scores are eligible for PF equal to a greater percentage of project costs. **Flat caps essentially replace the scaled percentage caps in Table 7 and cap PF for more expensive projects at a much lower percentage of project costs while allowing less expensive projects to receive the full amount of PF indicated by Table 7.**

Recommended alternatives to the flat cap policy proposed by WDNR

To ensure that the integrity of the proposed methodology for distributing PF is retained while also recognizing that there may not be enough PF available to award PF to every community to the level indicated in Table 7, we offer three alternative methods for PF distribution.

Alternative 1: Equitably distribute PF through several rounds until PF is exhausted. Available PF could be distributed to eligible applicants over 2 to 4 rounds of PF distribution. The amounts of PF distributed to communities per round should be scaled with reference to Table 7 and not dictated by flat caps. For example, if PF were distributed over the course of 3 rounds, each community could be awarded an amount equal to 1/3 of the percentage of project costs for which the community is eligible per Table 7. So, if Table 7 determined that a community is eligible for up to 30% of its project costs as PF, it would be awarded PF in the amount of 10% of project costs in round 1, another 10% of project costs in round 2, and the final 10% of project costs in round 3 (if PF is still available).

Alternative 2: Waive the cap on PF in the event of unaffordable water rates or if taking on SRF loans would cause the applicant to exceed its debt limit. In addition to the kinds of factors already considered in Tables 1-6, the U.S. EPA suggests water rate burden as a factor to consider for PF eligibility. The U.S. EPA recommends prioritizing PF for systems where combined water and sewer drinking water rates are greater than 2% of the 20th percentile household income (i.e., the lowest quintile of income for the service area).

Where water rates charged by the applicant water system *already* exceed the affordability threshold proposed by US EPA (greater than 2% of the 20th percentile household income), WDNR should waive the flat cap on PF and instead award PF to the level determined in Table 7. In addition, an applicant water system should be able to anticipate where the rate increase needed to pay for the proposed water project would require water rates to be increased above the affordable water rate burden threshold. Where the water system can demonstrate that this would be the case, the flat cap on PF should likewise be waived.

The cap should also be waived where the difference between the amount of PF the applicant would be eligible for under the Table 7 and the amount it would receive under the flat cap would require the applicant to borrow funds in excess of its debt limit.

Alternative 3: Reserve a portion of general PF for small communities, with the remainder of general PF available to large and small communities alike. The flat cap proposed by WDNR is likely motivated by the concern that, in the absence of the cap, all of the available general PF could be gobbled up by just a few large projects, leaving no general PF remaining for small communities that struggle to pay for needed water infrastructure projects. To address this concern without systematically undermining an equitable allocation of general PF to larger water systems that qualify for a substantial amount of general PF per WDNR's proposed methodology set out in Tables 1-7, WDNR could reserve a portion of General PF for small, rural systems – up to as much as 70% of available general PF – with the remainder available to large and small systems alike without the imposition of a flat cap.

4. We welcome new CWLP goals relating to workforce development and assistance for low-income ratepayers, and we urge WDNR to follow up with technical assistance and incentives to achieve these goals.

The Draft IUP articulates some new goals for the CWLP, including the following:

- Research methods to provide additional assistance to water systems with programs that assist low-income rate payers.
- Explore avenues to support pre-apprenticeships, registered apprenticeships, and youth training programs that open pathways to employment.

In addition to the policies relating to PF eligibility and distribution discussed above, these goals underscore WDNR's understanding of how water systems can reflect and shape broader equity issues and its commitment to the strategic use of CWLP assistance to build greater equity within and between Wisconsin communities. We urge the following next steps towards the concrete realization of the workforce, resiliency, and affordability goals cited above.

Use set aside funds to provide technical assistance on workforce development and water affordability

As discussed further in section 7, we urge WDNR to set aside additional funds from Wisconsin's FY2022 Supplemental CWSRF grant appropriated through the IJA for technical assistance. We further urge

WDNR to use a portion of these funds to develop and offer technical assistance related to the new workforce and affordability goals. Technical assistance such as guidance and workshops can help public water system administrators understand and emulate best practices for using water infrastructure investments to build a local, equitable workforce. Guidance, toolkits, and best practice case studies can likewise help water system administrators analyze affordability issues in the communities they serve and develop appropriate affordability strategies. The provision of planning grants to public water systems to enable them to design and implement workforce development practices and more affordable rate structures are also very important. These are all allowable uses of set-aside technical assistance funds, and we look forward to further discussion on how to best deploy set aside funds towards these goals.

Use bonus PERF points to incentivize public water systems to pursue equitable workforce development and affordability strategies.

In the [Draft IUP proposed by WDNR for the SFY2023 Safe Drinking Water Loan Program](#), WDNR proposes awarding PERF points to applicant water systems that have taken steps to implement the SDWLP goal of “incentiviz[ing] public water systems to implement corrosion control study recommendations, develop and maintain asset management plans, and execute partnership agreements.”⁹ In future CWLP IUPs, WDNR should consider introducing similar measures to incentivize and reward applicants that have taken meaningful steps to implement workforce development and affordability goals.

Use bonus PF to incentivize public water systems to pursue equitable workforce development and affordability strategies.

Another tool WDNR has deployed to reward certain desired practices in the [SDWLP Draft IUP](#) is the award of additional PF eligibility, over and above the amount that would be awarded in accordance with Tables 1-7.¹⁰ WDNR should award bonus PF to applicants that have implemented significant workforce equity and affordability measures, as these goals relate directly to equity issues which are at the heart of PF eligibility as determined by Tables 1-7. Awarding bonus PF to applicants who take significant strides to employ a local, equitable workforce and address water affordability concerns for its low-income customers would further the CWLP goal to **examine program policies through an equity and environmental justice lens and make improvement where possible.**

5. WDNR should identify the promotion of green infrastructure and other nature-based solutions to water quality challenges as a short-term goal for the CWLP, and adopt policies in the IUP to further this goal.

Greater implementation of green infrastructure (GI) for stormwater management and other nature-based solutions to address water quality challenges is important to build the resilience of communities and water systems in the face of the risks posed by climate change. Therefore, providing more support and incentives for GI and other nature-based solutions should be included in the CWLP

⁹ See WDNR, *Clean Water Fund Program (CWFP) State Revolving Fund: INTENDED USE PLAN for STATE FISCAL YEAR 2023*, pp 11.

¹⁰ See WDNR, *Clean Water Fund Program (CWFP) State Revolving Fund: INTENDED USE PLAN for STATE FISCAL YEAR 2023*, pp 15.

IUP as a short-term goal in furtherance of the CWLP's goal to **implement policy changes that encourage municipalities to make their wastewater treatment systems and stormwater systems more resilient, sustainable, and adaptive to climate change impacts.**

Through Wisconsin's innovative pilot projects program, WDNR already enables CWLP assistance, in the form of CWLP loans with interest as low as 0%, on a case-by-case basis for projects installing nature-based solutions to implement Wisconsin's innovative provisions for water quality trading (WQT) projects to reduce phosphorus from agricultural runoff and other non-point sources, as well as other non-traditional, innovative approaches to meet Wisconsin's Pollution Discharge Elimination System (WPDES) permit requirements.

To further drive innovative nature-based solutions as well as the broader take-up of green infrastructure solutions for stormwater management, WDNR should adopt the following policies:

- Reserve an additional 10% of Wisconsin's base and supplement federal CWSRF capitalization grants for green infrastructure projects, on top of the 10% Green Project Reserve mandated by federal law.
- Add another category of "priority PF" for GI projects situated in neighborhoods that meet the affordability criteria. Incentivizing GI in such neighborhoods would help to implement CFWP's equity and environmental justice goals as well as its climate resilience goals by ensuring that these communities share in the substantial co-benefits of GI including reduced risk of flooding, reduced urban heat-island effect, and increased health benefits.
- Designate GI projects proposed by CFWP applicants that have not previously implemented GI projects for stormwater management as pilot projects eligible for 0% interest to incentivize municipalities that may be behind the curve in relation to the stormwater management potential, cost-effectiveness, and multiple co-benefits of GI to consider and implement GI solutions.
- Expand the CWLP's pilot program to provide 0% SRF loans as matching funds for GI and other nature-based projects developed and partially funded by nonprofits or other private entities and sponsored by CWLP-eligible applicants for matching funds from the CWLP to leverage the private funding secured and enable these projects to be implemented. Under a nature-based project sponsorship program, eligible public entities are paired with a non-traditional partner organization bringing private or philanthropic funds to the table, allowing for the development of GI projects that would not otherwise be possible to finance with SRF funds to be prioritized. A good example is [Ohio's Water Resource Restoration Sponsor Program](#) which allows applicants to sponsor a watershed protection or restoration project through a third-party like a land trust or park district.¹¹

¹¹ Martinez, Maria. (2018) *Using State Revolving Funds for Land Conservation*, 21 May [Online]. Available at: <https://www.conservationfinancenetwork.org/2018/05/21/using-state-revolving-funds-for-land-conservation>

6. WDNR should expand the CWLP's Pilot Program to include innovative, cost-effective projects for distributed wastewater management.

The Draft IUP includes a number of measures to incentivize and offset the costs of wastewater treatment plant (WWTP) regionalization projects, including substantial PERF points to prioritize regionalization projects, "Regionalization PF" for up to 70 percent of project costs, and 0% interest on SRF loans. In many cases where a small community's WWTP is failing, redirecting the plant's discharges to a WWTP in a neighboring municipality may be the best option. In some cases, however, it may be worthwhile to consider [distributed wastewater systems](#) as a more flexible, cost-effective, and climate resilient alternative. To facilitate the consideration of such alternatives and enable their implementation, where appropriate, WDNR should consider, on a case-by-case basis, funding projects to explore and implement distributed wastewater treatment systems within the CWLP's pilot program.

7. We support WDNR's set aside of funds from federal grants, up to the maximum allowed by federal law, for administration and technical assistance, but we urge WDNR to reconsider how it plans to expend funds set aside for technical assistance.

It is very important to ensure that the state has sufficient administrative capacity not only to ensure the responsible administration of SRF funds, but also to ensure state capacity to make the best and most strategic use of SRF funds, including innovating and implementing ways that the SDWLP can deliver on its equity goals. For these reasons, we strongly support WDNR's proposal to utilize the full amount allowed to be set aside for state administration.

We also urge WDNR to set aside the maximum allowed for technical assistance from both the base and supplemental CWSRF grants. WDNR should also reconsider plans proposed in the Draft IUP for the expenditure of set aside funds for technical assistance.

a. WDNR should clarify goals and principles to guide the development of the CWLP's technical assistance plan.

WDNR should ensure that the use of set-aside funds for technical assistance is guided by the following principles and objectives:

- The assistance helps Wisconsin meet the goal established in President Biden's Executive Order 14008 of directing 40 percent of the benefits of federal funding to disadvantaged communities.¹²

¹² Exec. Order No. 14008, 2021. Available at <https://www.energy.gov/sites/default/files/2021/02/f83/eo-14008-tackling-climate-crisis-home-abroad.pdf>

- The assistance accounts for and meets the needs of the residents of underserved, disadvantaged, and overburdened communities¹³ where they are, and ensures an opportunity for robust and open communication with community members.
 - The assistance lowers barriers to accessing funding, thereby substantially and measurably increasing the number of communities with access to the resources they need to provide safe, affordable water and protect their water sources.
 - The assistance enables small, rural, disadvantaged, and overburdened communities to implement high-quality projects providing cost-efficient, sustainable solutions to pressing water infrastructure needs that would otherwise either remain unaddressed or impose costs that would add to the rate burden of low-income households.
 - The assistance provides wastewater and stormwater operators with the information they need to mitigate and adapt to climate change and natural hazards, especially in underserved, disadvantaged, and environmental justice (EJ) communities.
 - The assistance catalyzes long-term shifts in SRF practices to ensure more equitable distribution of SRF funds.
- b. WDNR should develop a Technical Assistance Plan, in collaboration with stakeholders, to guide its utilization of the increased TA funds available through set asides from supplemental CWSRF grants appropriated through the IIJA.**

States can set aside a proportion of their supplemental CWSRF grants appropriated through the IIJA in the same manner allowed under the Clean Water Act for the state’s annual federal CWSRF capitalization grants. WDNR should ensure that these funds are used to enable disadvantaged communities to access SRF funds, and clarify a plan, in coordination with community stakeholders, to meet these goals.

The TA plan should, among other things, identify how set-aside funds will be used to provide technical training and education, and community education and engagement in the identification, development, and prioritization of projects. The plan should explain how planning grants for things like engineering plans and other technical studies can be used to enable disadvantaged communities to identify and develop shovel-worthy projects. While it is possible to reimburse such costs from SRF awards after the project has been completed, financially disadvantaged communities lack the cash flow or other capacities to undertake these planning activities without up-front grant funds, and thus they are less able to access SRF funding.

¹³ U.S. EPA defines overburdened communities as “[m]inority, low-income, tribal, or indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors.” See: U.S. EPA. (2020) *EJ 2020 Glossary* [Online]. Available at <https://www.epa.gov/environmentaljustice/ej-2020-glossary>

- c. **WDNR should limit the number of new staff positions supported by TA set asides and instead use set-aside funds to engage non-profits and other third parties to provide technical assistance to disadvantaged communities.**

WDNR proposes to use set aside funds for technical assistance to hire 8 full-time and 2 limited-term positions.¹⁴ While it may be appropriate to use a portion of the TA funds to hire additional WDNR staff, in many cases it may be more expedient and effective to engage non-profits or other third-party TA providers to provide technical assistance on a regional basis to help communities identify and develop community-centered projects to meet their water infrastructure needs.

With growing interest in addressing long-standing water infrastructure needs, SRFs, and their equitable distribution, there is a growing cohort of organizations developing expertise in these issues. Any contractor engaged to develop a technical assistance plan should have a demonstrated capacity to effectively engage residents in disadvantaged communities and Wisconsin's TA plan should be developed with resident participation and input. The TA plan should also, in turn, clarify how technical assistance providers will be selected and vetted and community residents engaged in these determinations to ensure that workforce development and Justice40 concerns are adequately taken into consideration and implemented.

8. WDNR should explain in the IUP the readiness-to-proceed standards against which proposed CWLP projects are assessed, particularly in relation to public participation in the development and vetting of proposed projects.

Readiness-to-proceed standards ensure that key planning components have been addressed prior to awarding CWLP assistance, and provide guidance and assistance to applicants regarding these requirements where needed. Further clarification should be provided in the Draft IUP regarding what the readiness-to-proceed requirements are and how they are assessed by WDNR.

We are particularly interested in how WDNR assesses public participation in the development and vetting of proposed projects. The inclusion of public participation requirements within WDNR's readiness-to-proceed criteria provide an important lever to ensure that community based organizations, impacted residents, and other stakeholders have had appropriate opportunities to learn about, understand, vet, and influence water infrastructure projects funded by the CWLP. For this to be impactful, however, it is essential that community groups and residents are sufficiently notified and understand public participation opportunities. A thorough public vetting of projects, and opportunities to address concerns raised by community members, can be especially important for projects that can raise important governance issues, such as regionalization projects.

WDNR should provide further information to the public, through its website and in the Draft IUP, on the nature and extent of public participation requirements for various types of projects that might be funded

¹⁴ See WDNR, *Clean Water Fund Program (CWFP) State Revolving Fund: INTENDED USE PLAN for STATE FISCAL YEAR 2023*, pp 3-5.

by the CWLP. WDNR should also provide clear information on how readiness-to-proceed requirements for public participation are assessed by WDNR. The agency should also provide mechanisms whereby impacted residents or other stakeholders could provide information to WDNR, relevant to its assessment of whether public participation criteria has been satisfied.

9. WDNR should take further steps to strengthen public scrutiny of and feedback on policies adopted through the IUP.

We appreciate that WDNR offered a webinar to explain key proposals in the Draft IUP, which was recorded and posted on-line for stakeholders unable to attend the live webinar session.

WDNR should extend the comment period between the publication of the Draft IUP and comment deadline to 60 days to allow stakeholders to formulate and vet comments within the comment period. In addition to written comments, we urge the WDNR to convene an on-line public hearing on future Draft IUPs. While the explanatory webinar is useful for helping stakeholders understand the Draft IUP and WDNR's rationale for its policy proposals, a formal public hearing would allow stakeholders to publicly respond to the Draft IUP, and to hear other stakeholder views as well.

Conclusion

In closing, we appreciate the progress being made towards ensuring a more equitable distribution of SRF assistance in Wisconsin. Towards that end, we hope that you will take the analysis and recommendations offered here into serious consideration, and we look forward to further discussion and collaboration on the issues highlighted.

Sincerely,

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