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Andrew Sawyers

Director, Office of Wastewater Management  
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1200 Pennsylvania Avenue, N.W.  
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Dear Assistant Administrator Fox and Director Sawyers:

The National Association of Clean Water Agencies (NACWA) appreciates the dedicated work by the U.S. Environmental Protection Agency (EPA) to implement the *Infrastructure Investment and Jobs Act (IIJA)*. The *IIJA* will support clean water agencies in making significant investments in essential projects to maintain our nation's critical infrastructure, protect public health and the environment, and advance environmental justice.

NACWA is looking forward to the release of programmatic guidance to help utilities and states prepare for these funding opportunities. Public clean water utilities stand ready to help ensure the successful implementation of this historic federal investment.

Building on our initial [letter](#) to EPA, NACWA has greatly appreciated the opportunities to engage with the Office of Water, including virtual discussions and the recent in-person dialogue with you at our Winter Conference. This letter provides further recommendations to help implement EPA's *IIJA* funding program in a manner that advances EPA's and NACWA's shared priorities—including ensuring that these funds are accessible to communities of all sizes and resource levels and that they assist disadvantaged communities.

The *IIJA* is a historic investment opportunity – as Assistant Administrator Fox has said, this is water's moment. And while the law

strategically builds upon existing successful methods for delivering federal infrastructure investment, it also presents an important opportunity to innovate and to consider best practices for delivering federal water investment equitably, ensuring that all communities and populations in need can benefit. With an opportunity of this size, it simply isn't enough to do the same as has been done before.

NACWA anticipates that states will look to implement the funds and target disadvantaged communities by looking to their existing affordability criteria in place under the Clean Water State Revolving Fund (CWSRF). NACWA members have flagged some concerns with these approaches, especially that reliance on existing state affordability criteria alone could deny many historically disadvantaged populations the opportunity to benefit from this historic influx of money, including grants and additional subsidization.

The legislation's provision of a heightened share of the funding as additional subsidy, and the White House directive to ensure that funding goes to disadvantaged communities, call for full consideration of what this influx of loans, loan forgiveness, and grants will mean. As EPA issues guidance on how states can prioritize disadvantaged communities, we offer the following suggestions. These align with – but further flesh out – the thoughts contained in the prior letter to you and discussions with you.

### Defining “Disadvantaged Communities” in the Clean Water Context for Purposes of Bipartisan Infrastructure Legislation (BIL) Funding.

We recommend “**communities**” be defined using one or a combination of the following definitions. These definitions seek to align with interim recommendations from the White House on disadvantaged communities, applied to the clean water context.

- Municipalities as defined in Section 502(4) of the Clean Water Act, that is: *A city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.*
- A group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions. Living in geographic proximity can mean people living within a given political boundary or within subdivisions thereof, including but not limited to utility service areas, political subdivisions within utility service areas, census tracts, zip codes, neighborhoods or sewersheds.

Many large city and regional utilities include a range of diverse communities with highly varied socioeconomic characteristics, often including some of the most socioeconomically disadvantaged areas in the state alongside communities of affluence. Disadvantaged populations within these

larger utility service areas acutely bear the burdens of rising rates and projects benefiting them should not be disqualified simply because they are located near those of higher means.

It is critical that the definition selected for “communities” enable the many regional sewer districts, utility and political subdivisions, and individual geographic areas within larger utilities to be eligible to both receive funds for projects implemented directly by the utility and to receive funds to then distribute to communities in their service areas in conjunction with planning and technical assistance.

We recommend “**disadvantaged**” refer to a community—as described above—facing any one or more of the following factors, and where a significant amount of the benefits of the project would accrue to that community. These factors include:

- Poverty, unemployment and/or underemployment levels higher than the state or national average for a consecutive 12-month period at any time during the preceding five years;
- Twenty percent (20%) or more of the households in the community fall below 200% the federal poverty level;
- Combined sewer and water costs are greater than 2% of the 20th percentile household income (i.e., the Lowest Quintile of Income for the Service Area);
- History of inadequate infrastructure, such as persistent localized flooding, backups, or lack of service;
- Known public health disparities compared with other communities in the same or surrounding jurisdiction, regional area, or state;
- Disparate vulnerability to climate impacts (including heat, sea-level rise, air quality, prolonged drought, extreme precipitation) compared with other communities in the same or surrounding jurisdiction, regional area, or state;
- Communities that have not secured federal investment in their clean water infrastructure from any US Environmental protection Agency (EPA), US Department of Agriculture (USDA), US Department of Commerce, or Bureau of Reclamation (BOR) programs outside of emergency programs over the preceding ten years (without disqualifying those who have received prior federal investment yet meet other factors); or
- Communities that meet a definition of an Environmental Justice community as defined by the Council on Environmental Quality (CEQ).

**Ranking or tiered approaches.** Communities could qualify as disadvantaged under any of these factors individually, with a state providing priority to those qualifying under multiple factors. Whether a community or project area qualifies as disadvantaged should not be a binary or zero-sum determination. Rather, states are encouraged to rank communities applying for assistance based on the factors above and to provide greater levels of additional subsidy to communities that have a relatively greater degree of these factors – such that any eligible community may receive some additional subsidy, with greater benefit going to those deemed to be more highly disadvantaged as defined by the factors listed above. A tiering approach for different subsidy levels is one way states could make the process more equitable.

Both large and small as well as urban and rural communities/clean water agencies would be eligible for *IJJA* funds based on these characteristics. There should be no population limit, either maximum or minimum, on the size of a community that could qualify as a disadvantaged community. NACWA is aware that some states have traditionally limited grant or additional subsidization funding to only small or rural communities. NACWA strongly discourages this approach and asks EPA to strongly discourage it as well – large cities and urban areas should also be eligible for these funds, especially if there are areas of their service area that qualify as disadvantaged communities.

As additional subsidy options are being considered – specifically, 100% principal forgiveness versus grants – we encourage the state to offer the choice to eligible communities given that financial situations vary by community and some may not be able to carry further debt, even if the loan is made with the intent to be forgiven.

NACWA also asks EPA to give thought to guidance on how a community that qualifies as a disadvantaged community and requires emergency funding can access those funds via a grant or via additional subsidization/principal forgiveness and not as a loan.

### Bringing New Communities into the SRF Programs

NACWA is encouraged by EPA's attention to under-resourced communities that can lack the financial, technical, and/or managerial resources to secure SRF funding. The influx of SRF funding through *IJJA* can be a catalyst to addressing these environmental justice concerns.

Most NACWA utility members have the resources to consider these funding opportunities, but others may not know where to start to navigate the process. Many utilities may be willing to serve as partners in regional efforts. We encourage EPA and the states to consider working with utilities that have a history of leveraging the SRFs who might be able to act as a resource for other communities in their regions or states that are newly considering SRF funding. Along with direct technical assistance by the Agency and agreements with outreach partners, this kind of utility peer-to-peer support can offer the broadest reach. NACWA would be eager to help EPA and the states facilitate this kind of approach.

While there is a lot of enthusiasm to get shovels in the ground to modernize our nation's infrastructure, we share EPA's goal to fund projects that are "shovel worthy" first and foremost. We also strongly support and encourage the use of these funds for planning and design efforts where needed. This may be particularly important to bring disadvantaged communities that have not had funding available in the past to the table.

Critically, by funneling the *IJJA* investment through the SRFs, Congress ensured these funds are available to utilities of all types. This is particularly important to the many utilities that are special districts and, as such, were left out of benefiting from the *American Rescue Plan Act* since funds

available for water/sewer investment under that program only flowed directly to units of local government and states.

### Next Steps

While EPA guidance to states is non-binding, NACWA believes that clear guidance will help utilities work in partnership with their states to advance the goals of the *IJJA* and ensure these historic influxes of funds reach communities with the greatest challenges. We urge EPA to provide substantive direction to help spur such innovation.

NACWA greatly appreciates the dedication that EPA has shown to date in readying guidance for these funds that takes stakeholder recommendations into account—both within the Agency itself and in working with the Office of Management and Budget to prepare for implementing Buy America, Build American to water infrastructure programs.

Numerous challenges will no doubt need to be worked through in the months and years ahead. Issues such as how one pot of funding (e.g., traditional SRF) will relate to another (*IJJA* funds, WIFIA, etc.), and how emergency assistance might be provided, will likely need to be worked out as the program progresses. We hope that the 5-year funding period under the *IJJA* will facilitate continued dialogue and an adaptive approach as thinking evolves over time.

The Association's members and NACWA's Board of Directors hope to continue serving as a resource to assist the Agency with its implementation work ahead. Please do not hesitate to contact me at any time to discuss further.

Sincerely,

Adam Krantz  
CEO

CC: Michael Deane, EPA Office of Water  
Deirdre Finn, Council of Infrastructure Financing Authorities  
Julia Anastasio, Association of Clean Water Administrators