



Association of State Drinking Water Administrators (ASDWA)

Testimony to the

Senate Committee on Environment and Public Works

**An Information-Gathering Process on Draft Legislation entitled, America's Water
Infrastructure Act of 2020 and The Drinking Water Infrastructure Act of 2020**

Submitted by J. Alan Roberson, P.E.

Executive Director, ASDWA

Tuesday, April 28, 2020

Summary

The Association of State Drinking Water Administrators (ASDWA) submits the following recommendations for strengthening America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020) on behalf of the drinking water programs in the 50 states, five territories, District of Columbia, and Navajo Nation. ASDWA applauds and supports the increased and extended authorizations for existing lead programs, increased support for water systems to enhance security and resiliency, and support of new and existing programs to assist small, rural, and disadvantaged systems. ASDWA requests the authorization for the Public Water System Supervision (PWSS) program be increased from the current \$125 million to \$250 million annually and that the Committee take this opportunity to extend and increase the authorization for the Drinking Water State Revolving Fund (SRF).

Testimony

Chairman Barrasso, Ranking Member Carper, and members of the committee:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer this written testimony during the information-gathering process regarding the draft America's Water Infrastructure Act of 2020 (AWIA 2020) and the Drinking Water Infrastructure Act of 2020 (DWIA 2020). We commend the committee for moving forward with the important work of developing legislation to protect public health and the environment through the Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) even as the COVID-19 pandemic continues to impact efforts to ensure the continued delivery of safe drinking water, Congressional operations, and normal life around the country.

ASDWA represents the 57 administrators and their staff from the 50 state drinking water programs, five territorial programs, the District of Columbia and the Navajo Nation. Our members have the responsibility for direct implementation of the SDWA and have primary enforcement responsibility (primacy) in their respective jurisdictions. Our members and their staff are on the front lines every day, providing technical assistance and support of our country's 150,000 drinking water systems, which is critical to ensuring safe drinking water and protecting public health. As such, our testimony focuses on the aspects of the draft legislation that amend the SDWA.

Secure and Resilient Public Water Systems and Assistance for Small, Rural, and Disadvantaged Public Water Systems

ASDWA supports (with two recommended additions) the multiple provisions that encourage increasing the resiliency and security of public water systems and the provisions that provide increased resources for small, rural and disadvantaged water systems in both AWIA 2020 and DWIA 2020, including:

- Reauthorizing the existing Drinking Water System Resilience and Sustainability Program under section 1459A(l) of SDWA through DWIA 2020 section 6;
- Establishing the proposed Midsize Drinking Water System Infrastructure Resilience and Sustainability Program in DWIA 2020 section 9;

- The commissioning of a study on low-income households in the United States without affordable public drinking water services proposed in DWIA 2020 section 10;
- The small and disadvantaged community analysis required by AWIA 2020 Section 2017;
- The expansion of the Assistance for Small and Disadvantaged Communities program to allow for the use of funds to purchase point-of-use (POU) filters that remove contaminants of concern from public drinking water systems and for providing information regarding proper filtration maintenance and options regarding replacing lead service lines or other sources of lead from water systems and technical assistance, as proposed in DWIA 2020 section 6
 - ASDWA recommends that the legislation allow the flexibility for states to determine if POU devices are allowable (or not), given several states' negative past experiences with POU devices with multiple long-term issues such as 100% community participation, device maintenance and replacement, and compliance monitoring;
- The operational sustainability program for small public water systems, as proposed in DWIA 2020 section 6; and
- The creation of a new EPA grant program to provide grants to a utility or nonprofit to voluntarily connect a low-income household to a municipal public drinking water system, as proposed in DWIA 2020 section 6. Even with 150,000 regulated public water systems in the United States, a potential gap for ensuring safe drinking water still exists as represented by the approximately 15 million households that rely on private wells with limited regulation at the local level, although not all of those households are low-income.

ASDWA supports requiring EPA to submit a report to Congress that assesses the vulnerability of coastal and inland drinking water and wastewater infrastructure to sea level rise, storm surge, extreme weather, and other flood risks in AWIA 2020 section 3004. ASDWA recommends that inland drinking water and wastewater infrastructure be included in this report as many water systems in states such as Nebraska, Kansas, Iowa and Missouri have all experience flooding associated with the Missouri River and have been impacted by these disasters.

Lead in Drinking Water

ASDWA supports DWIA 2020's reauthorization of the Voluntary School and Childcare Lead Testing Grant Program but does not support the expansion of eligible grant recipients to include public water systems and eligible nonprofit organizations. Funding for lead testing in schools is crucial to protecting the most vulnerable population, our nation's children, from exposure to high levels of lead in drinking water, however, states should not be competing with other entities for this funding. This could potentially create confusion and competition between the funds awarded to states to test schools and funds awarded to systems and non-profits. ASDWA also supports extending the grant programs authorized in SDWA Section 1459B through 2022. These grants, which help communities implement lead reduction projects, will continue to be an important source of federal support for the removal of all lead service lines, both publicly and privately owned, especially for water systems serving low-income homes and communities. With the upcoming finalization of EPA's Lead and Copper Rule Revisions (LCRR),

authorized funding for these grant programs, created by Congress in the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (P.L. 114-322), will likely need to be expanded and the programs further extended.

Support for State Drinking Water Programs

Additional funding to the state drinking water programs is essential for appropriate implementation of the SDWA to ensure safe drinking water. Many state primacy agencies are already short staffed, as detailed in [ASDWA's 2018 Beyond Tight Budgets](#) report, and are frequently called upon to divert resources from core drinking water programs (including inspections, technical assistance and training, permitting/plan approvals, and compliance/enforcement) to address emerging needs – most recently the COVID-19 pandemic. Without additional funding, both the core program and the additional work – to address emerging contaminants such as per- and polyfluoroalkyl substances (PFAS) and harmful algal blooms (HABs), implementing more stringent requirements for contaminants such as lead, and providing increased assistance to drinking water systems who continue to struggle to meet SDWA compliance – will suffer.

Funding is vital to state drinking water programs to fulfill their role in implementing the SDWA and protecting public health. The number of regulations requiring state adoption and implementation as well as performance expectations continue to grow while the federal funding increases have not kept pace. Inflation has further eroded the relatively static funding levels. ASDWA's 2013 Report, [Insufficient Resources for State Drinking Water Programs Threaten Public Health](#), estimated the funding gap to be at a minimum of \$240 million. The 2019 update to this report (publication pending) estimates the funding gap has increased due to the emerging needs previously mentioned. ASDWA respectfully requests the authorization for the Public Water System Supervision (PWSS) program, the principal federal funding source for state water programs, be increased from the current \$125 million to at least \$250 million annually.

Drinking Water SRF Reauthorization and Funding for Emerging Contaminants in Drinking Water

ASDWA supports the authorization for additional funding to assist in the remediation of contamination from emerging contaminants, with a focus on PFAS, as proposed in DWIA 2020 section 4. However, ASDWA urges the Committee to ensure that this funding can be awarded through the SRF programs as additional subsidy, rather than only through grants. If the funding for this program was appropriated as written, states would face massive barriers to implementation, including passing new state laws or updating laws to allow for the SRF programs to award grant funding. They would also have to acquire additional state employees to implement this program, since as written, it is not integrated into existing processes.

- Grants versus loan forgiveness/principle forgiveness: in the draft bill language, only “grants” are authorized, not principal forgiveness and/or negative interest rate loans.
- A “grant” is a legally distinct financial instrument versus a loan with principal forgiveness or a negative interest rate.

- 46 of the 51 Drinking Water SRF programs have never provided a “grant” from their Drinking Water SRF program. Only 2 states offer it on a regular basis.
- By dispersing the funds as grants, there would be additional requirements in OMB’s Uniform Grant Guidance that water systems must follow if these funds are awarded by states to the water systems. This places additional and unnecessary burden on water systems, as well as the states who manage and oversee these projects.
- Some states have state-level legal prohibitions against giving “grants” from their SRF program.

The simplest route is to modify the language to include additional subsidy options, such as principal forgiveness. It is possible for the Drinking Water SRF programs to make a loan for 100% principal forgiveness so the project ends up costing nothing, or next to nothing depending on when during the course of a project the program begins to charge interest (typically under \$1,000 for a \$500,000 - \$1,000,000 loan, depending on the current interest rate). Allowing principal forgiveness and other subsidy forms rather than only grants would significantly reduce the burden on states and water systems.

The language in the DWIA 2020 draft bill that codifies Appropriations language requiring states to use 20% of the Drinking Water SRF for grants, negative interest loans, or to buy, refinance or purchase debt is problematic from the states' perspective. While subsidy options under the Drinking Water SRF are an important and necessary component to assisting disadvantaged communities, requiring a minimum 20% subsidy is problematic for some programs. Additional subsidization reduces the total number of water infrastructure projects that can be funded by the federal capitalization grant. Many states already offer state-funded grants to complement the SRF subsidized loans and could benefit from the ability to provide more subsidized loans rather than additional subsidization. By removing the minimum required percentage for disadvantaged subsidy and allowing all SRF applicants to be eligible for such subsidization, the Committee can increase flexibility for states to provide additional subsidization and ultimately increase the funding available to communities.

Though ASDWA supports the reauthorization of WIFIA and Clean Water SRF, it is a missed opportunity that the Committee has failed to include a similar reauthorization of funding for the Drinking Water SRF. ASDWA recognizes that the Drinking Water SRF was reauthorized in the 2018 AWIA, but the reauthorization was only through fiscal year 2021. [EPA’s 6th Drinking Water Needs Survey](#) concluded that \$427.6 billion of capital investment was needed for the next 20 years. The total translates to \$21.4 billion annually. Continued investment is needed for aging treatment plants, storage tanks, pumps, and distribution lines that carry water to our nation’s homes, businesses, and schools. Unlike other water infrastructure funding programs, the Drinking Water SRF offers project subsidization for disadvantaged communities, funds for training and technical assistance, and is a fundamental funding mechanism for many medium and small utilities who would pay much higher interest rates if forced to use the bond market. We urge the Committee to take advantage of this opportunity before the program expires and to extend and increase authorization of the Drinking Water SRF, picking up where AWIA 2018 left off.

ASDWA would like to encourage the Committee to consider temporary changes to the Drinking Water SRF program that would help the water sector during the COVID-19 pandemic.

First, ASDWA recommends the required 20% state match for the 2020 and 2021 Drinking Water SRF capitalization grants be eliminated. Presently, states are required to contribute 20% of the capitalization grant for the SRFs to be awarded federal funding. However, the COVID-19 pandemic has caused an economic downturn at a minimum on scale of the 2008 Great Recession. Eliminating the state match requirement for the SRFs, just as Congress did in the America Recovery and Reinvestment Act of 2009, will support states facing a sudden loss of tax revenue or inability to access financing for state match through the municipal bond market, and ensure federal funding for SRF subsidized loans for water infrastructure projects is available as soon as possible.

Second, ASDWA recommends that the Drinking Water SRF Administration and Technical Assistance set-aside, which allows states to use up to 4 percent of the capitalization grant, \$400,000, or 1/5th percent of the current valuation of the fund (whichever is greater), for costs associated with administering and implementing the state's Drinking Water SRF program and providing technical assistance to systems of all sizes, be increased to 6% for 2020 and 2021 capitalization grants. State primacy agencies and financing authorities faced challenges after the 2008 Great Recession because many water system projects were not shovel-ready. Because of the COVID-19 pandemic, it's likely that the sector will see a similar delay in projects being ready to move forward with funding and construction when we return to normal operations. AWWA and AMWA's [Financial Impact of the COVID-19 Crisis on U.S. Drinking Water Utilities](#) analysis, water systems expect to delay, reduce, or eliminate capital construction by as much as \$5 billion (annualized) to help manage cash flows and to comply with required Federal or State temporary shutdown of non-essential businesses activities. An increase in the administration set-aside will provide state Drinking Water SRF programs with additional resources to provide the needed assistance to water systems when capital construction and expenditures return to normal and will ensure states are able to maintain the staff to manage a robust infrastructure funding program throughout the pandemic.

Thank you again for your continued work and support to ensure safe drinking water for all. ASDWA appreciates the opportunity to submit this testimony to support the committee's information gathering process. We look forward to continued engagement as the Committee refines these proposals in the weeks and months ahead.