



February 15, 2022

Dr. Jennifer McLain
Director, Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Second Round of Input on Justice40

Dear Dr. McLain,

The Association of State Drinking Water Administrators (ASDWA) would like to thank the Office of Water for reaching out to ASDWA and the state primacy agencies as part of our working together on implementing the Biden Administration's Justice40 Initiative. As co-regulators with EPA, we wish to continue our close working relationship. Continuous dialogue and collaboration are critical as we work to implement Justice40 for the best benefit of our most disadvantaged communities. ASDWA members will implement the policies needed to ensure the Administration's Justice40 goals are met, and our members wish to identify with you the best pathway forward that addresses state drinking water programs.

As ASDWA stated in our December 28, 2021, letter regarding the Justice40 Initiative, primacy agencies continue to find it challenging to provide specific input, given the many underlying uncertainties as to how EPA's Office of Water plans to implement the Initiative. ASDWA appreciates the regular engagements EPA has provided to help us inform our membership of EPA's ongoing work under the initiative and we appreciate these engagement opportunities. These crucial meetings have allowed ASDWA to offer these insights to EPA staff, and ASDWA anticipates providing additional input throughout the first half of 2022.

State primacy agencies strongly support the Administration's efforts to increase SRF funding available to disadvantaged communities. It is important to acknowledge, however, the diligent work that has already been done by state agencies to provide 33.2% (based on the number of funding agreements, from page 21 of [EPA's 2020 DWSRF National Summary](#)) of SRF funds to those communities that states have defined as "disadvantaged." It is also important for EPA to recognize that a single definition of "disadvantaged" will not work for a range of reasons such as differences in state laws. EPA could offer a menu of approaches for states to consider, or choose from, in potentially updating or revised their current definition.

ASDWA would like to provide the following comments to the Agency to further highlight high-level concerns, questions, and themes that have emerged from our newly formed Justice40

workgroup, made up of members from eighteen states. This workgroup is a valuable source of knowledge and expertise, and we encourage EPA to further engage and utilize this group as decisions are made on the Justice40 Initiative in the coming months.

ASDWA recommends that EPA clearly outline the scope of the Justice40 Initiative and how it would impact drinking water systems and funding. Multiple general principles have been discussed and specificity is needed as soon as possible. The workgroup has identified the need to look at disadvantaged communities through two lenses:

1. Many small and/or rural water systems have already been defined under the Drinking Water State Revolving Fund (DWSRF) to be disadvantaged community public water systems, who face unique and substantial difficulties that will require innovative solutions.
2. Disadvantaged urban communities and neighborhoods who are served by water systems who may not be considered disadvantaged across the system's service area.

ASDWA encourages EPA to work with states to help identify these unique situations and to brainstorm solutions that can be versatile and meet the specific needs of those in both scenarios. Flexibility on this definition is needed for successful implementation across each state drinking water program. Below are specific comments on several aspects of Justice40.

States and EPA Roles

EPA serves a vital role in developing regulations and programs under the Safe Drinking Water Act (SDWA) and overseeing the state primacy agencies charged with implementing those programs. State primacy agencies have an equally critical role in implementing the programs put forth by EPA, while providing oversight for all public water systems in their state. There is a significant difference between EPA's oversight of state drinking water programs and primacy agencies' implementation of those programs. While EPA can provide valuable insight into how states' implementation of these programs might be improved, primacy agencies ultimately must operate under the constraints provided not only by EPA, but also by their own state governments and stakeholders.

As we move forward with the implementation of BIL funding and Justice40, ASDWA will continue to emphasize that technical assistance for these programs must go through our members. Primacy agencies are best equipped to handle the unique situations that arise within the communities they regulate. These agencies understand the unique local conditions.

Definition of "Disadvantaged Communities"

EPA has recognized the variation in how different states define "disadvantaged communities." ASDWA recognizes that EPA's engagement on this matter to date has been to gather information on state practices, rather than an attempt to establish a nationwide standard. ASDWA recommends that the EPA avoid developing a federal definition for disadvantaged communities and focus efforts on developing recommendations as to how states might re-evaluate or update their own definitions. States need flexibility in defining a "disadvantaged community" to best meet the needs of the unique water systems and communities in their state. Further, states need flexibility on what EPA would consider an "acceptable" definition of

disadvantaged communities that is incorporated into EPA's Justice40 so that acceptability and flexibility are balance for BIL and Justice40 implementation.

Quantification of Benefits

ASDWA recommends that EPA allow for additional time and continued engagement of what metrics could be used to quantify "benefits" under the SDWA. ASDWA is actively working with our Justice40 workgroup to provide this crucial input; however, this is not a simple task, particularly when there are still so many unknowns. For initial input, ASDWA cautions against stretching the definitions of benefits to include parameters that are beyond the scope of the drinking water program, such as a measurement of jobs created, contaminant exposure prevented, etc. For example, it would be impossible for a state to develop an estimate of the health benefits of avoided IQ reduction associated with a lead service line replacement project that a community has implemented, given that it is outside both the scope and the capacity of state programs. Measurable metrics that could be reported to EPA and used to measure benefits relevant to the Justice40 Initiative include planning, engineering, and construction costs associated with SRF projects.

Data Reporting

ASDWA recommends that EPA provide more detailed information regarding this data reporting and continue to work with states to find a logical solution to improve this reporting process without increasing the burden to states, as it will be vital for continued DWSRF reporting, including BIL and Justice40 reporting. ASDWA recognizes that EPA is looking to increase and streamline data reporting for SRF programs to better reflect how funds are being provided and used by disadvantaged communities, and ASDWA supports the collection of more informative data to assess effectiveness and make decisions.

System Sustainability

Multiple ASDWA members have voiced concerns about providing SRF funds to water systems that have not demonstrated long-term sustainability. There are many factors that continue to impact the viability of many small and disadvantaged public water systems, including but not limited to: sustainability of proposed projects, complexity of regulatory burden, staffing issues, and lack of technical, managerial, and financial (TMF) capacity to run the water system in a safe manner. States have the burden of determining if funding through the SRF program will be able to sustainably address these issues at a water system; if these issues cannot be addressed through funding alone, and if a water system fails to show any initiative to improve their asset management, then states have reservations about considering it a "benefit" to fund a project at an unsustainable, disadvantaged system. State DWSRF programs are required to implement a process to ensure that DWSRF funds are not awarded to system that lacks adequate TMF capacity unless the project funded will resolve the TMF problems or issues.

Leveraging Existing Research

ASDWA recommends that EPA carefully consider the published research on this issue and use the knowledge from the experts to guide the development of the Agency's Justice40 guidance. The academic community researching environmental justice continues to grow. Below are

some, but not likely all, of the published papers over the past decade that are worthy of consideration during EPA's deliberations:

- Vanderslice, J., 2011. Drinking Water Infrastructure and Environmental Disparities: Evidence and Methodological Considerations. *Am J Public Health*. 2011; 101: S109–S114. doi:10.2105/AJPH.2011.300189
- Switzer, D., and Teodoro, M., 2017. The Color of Drinking Water: Class, Race, Ethnicity, and Safe Drinking Water Act Compliance. *Journal AWWA*. 2017; 109:9:40-45. doi.org/10.5942/jawwa.2017.109.0128
- Switzer, D., and Teodoro, M., 2017. Class, Race, and Ethnicity and Justice in Safe Drinking Water Compliance. *Social Science Quarterly*. 2017. doi:10.1111/ssqu.12397
- McDonald, Y.J., and Jones, N.E. 2018. Drinking Water Violations and Environmental Justice in the United States, 2011-2015. *Am J. Public Health*. 2018; 1401-1407. doi:10.2105/AJPH.2018.304621
- Pace, C., Balazas, C., Bangia, K., et al, 2022. Inequities in Drinking Water Quality Among Domestic Well Communities and Community Water Systems, California, 2011-2019. *Am J. Public Health*. 2022;112(1)88-97. doi.org/10.2105/AJPH.2021.306561

The focus of social science research on drinking water is new, and ASDWA recommends that EPA utilize the existing and emerging social science research in its science-based decision-making on environmental justice and equity. To assist in this effort, ASDWA plans to host a webinar in early May on these issues with some of the above researchers to broaden the understanding of the latest research amongst the stakeholders. Additionally, ASDWA recommends that EPA increase its social science research funding for drinking water.

Given the need to develop timely guidance for state primacy agencies and water systems, leveraging the existing research and using the primacy agencies' experience are critical. Refining Justice40 implementation for the Office of Water (OW) will necessitate continuous communications with states, since the SRF funding flows from EPA to the states to the systems. We look forward to further engagement with EPA on this critical issue.

Sincerely Yours



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