



December 10, 2014

Andrew Sawyers, Director  
Office of Wastewater Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave.  
Washington, D.C. 20460

Peter Grevatt, Director  
Office of Ground Water and Drinking Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave.  
Washington, D.C. 20460

Dear Messrs. Sawyers and Grevatt:

The below-signed state organizations are writing to offer our collective comments, for your consideration, as the Agency develops a pilot Water Infrastructure Financing Innovations Act (WIFIA) program as authorized under the recently enacted Water Resources Reform and Development Act (WRRDA). We believe that there are several key concepts the Agency should consider when designing the pilot program.

***State Consultation in Developing WIFIA Pilot Program***

We fully appreciate the fact that a WIFIA pilot program is envisioned by Congress as an EPA-administered program. Nonetheless, EPA should have early and meaningful consultation with states, as co-regulators, in the crafting of a pilot program. As administrators of the Clean Water and Drinking Water state revolving loan fund (SRF) programs -- for 27 years in the case of the CWSRF and 18 years in the case of the DWSRF -- states have much to offer, by way of experience, on what works and what does not regarding funding of water and wastewater infrastructure projects. States wish to ensure that the WIFIA pilot program in no way adversely impacts or disrupts the very successful SRF programs -- which should be complemented and not compromised by this new program. To demonstrate such complementarity, we believe the pilot program should focus, in large part, on the types of projects that would not otherwise be funded by the SRFs.

### ***Right of First Refusal***

**Need for Meaningful Opportunity:** We believe that Section 5028(a)(6) of WRRDA is intended to give the SRF programs a real opportunity to fund or participate in funding of projects. For this opportunity to be meaningful, it is important that the project and funding opportunity submitted to the SRF program be substantially the same opportunity that EPA acts on for the WIFIA funding decision. As such, we request that: (i) applicants be required to submit the same project to the SRF program that is to be submitted for WIFIA funding, together with required SRF application information; and (ii) that the SRF program (if it chooses to participate) only be required to match the funding amount requested in the WIFIA application (i.e. 49%), unless the SRF program wishes to fund a larger portion of the project. EPA should re-notify the SRF program pursuant to Section 5028(a)(6), if the applicant substantially changes the scope or schedule of the project after the original notification.

**60-Day Clock for Right of First Refusal Consideration:** EPA should build an “advance warning” component into this portion of their procedures. We believe that, in most cases, states will need significantly more time than the 60 days that the statute provides to consider whether or not they wish to fund a project that would otherwise be funded by WIFIA. State processes for considering infrastructure loan applications typically take more time than 60 days. For instance, many states have established application deadlines which correspond to the EPA annual grant award cycle. EPA SRF capitalization grant funds are awarded on an annual basis and the annual grant application includes requirements for public review of the Intended Use Plan (IUPs), plus 90 more days for EPA approval. If a state that had sufficient funds available decided to fund an eligible project on the day the application was received, it would still likely be four months before the state was able to commit funding – due solely to Federally-required steps and associated timelines. In addition, many state oversight bodies that approve IUPs only meet periodically throughout the year and some only meet yearly. We also believe that one of the conditions preceding submission of an application is the completion of design and receipt of all appropriate permits. In short, we believe that the pilot program should provide for applicants to meet with state SRF program personnel early on in the process – in advance of triggering the 60-day clock. State representatives would be pleased to consult with EPA, as the Agency develops the terms and conditions of a pilot program, so that sufficient right of refusal lead time can be built it -- in consideration of the types of project documentation that will be available at various stages in the application process. Ultimately, however, if the pilot program leads to a permanent WIFIA, the statutory time frames associated with the right of first refusal should be lengthened.

**State Intent to Fund Project:** If a state SRF program agrees to fund a project that has applied for WIFIA funding, we believe that such indication would need to have appropriate conditions (e.g., “the project is eligible to be funded by the state and the state has the capacity to do so”). The applicant would still need to provide all needed materials and documentation sufficient to conduct necessary Environmental and Financial Reviews prior to receiving funds. Such projects would ultimately need to be included in a state’s IUP.

**Time to Close Loan:** The statute indicates that, once the state agrees to fund a project (that has been submitted to the state under the 60-day right of first refusal provision), the loan must be closed in 120 days (i.e., 180 days total from the time of notification). A state’s ability to meet

that time frame will ultimately depend on the project's readiness to proceed and the completeness of all documentation. If planning and design have been completed on a project, funding has been authorized by the state, and the municipality has adopted a parameters resolution -- a 120-day window (assuming 60 days has been taken for the right of first refusal process) for closing a loan may be achievable. But if none of these milestones has been accomplished, it would virtually be impossible to close a loan within 120 days. Further, we believe that, if there are delays on the applicant's part, such a delay should not count against the remaining portion of the 180 days (e.g., 120 days, if 60 days has been taken for the right of first refusal consideration period) to close the loan.

### ***Use of SRF Funds for Non-Federal Share of Project***

After SRF funds are loaned and repaid, repayment streams are "state" funds and states must have the discretion to use these funds as they deem appropriate in their ongoing SRF programs. We also contend that such state funds should not be subject to Federal cross-cutting requirements. In any case, we believe that it ultimately must be a state's decision as to whether or not SRF funds should be used to make up the non-Federal share of a WIFIA project. States should not be required to do so.

### ***Bundling Together Small SRF Projects and Redirecting them to WIFIA***

While we have not surveyed all states on their reactions to the bundling provision in WIFIA, our general sense is that most states believe that it is an unlikely scenario. We do not believe that many (or any) states will utilize this provision. We are aware that some WIFIA proponents believe there is a capacity shortfall within the SRFs, such that bundling of small projects and directing them to WIFIA would be an attractive course of action. In most states, there is no such impediment. Some states have done bond bank lending that has involved bundling together of some small projects. However, in these cases, the state has complete control over these bundling situations. Bundling of a series of SRF projects and seeking WIFIA loans from EPA would put the state in the position of adding another layer of procedures to their infrastructure loan efforts. Our principal recommendation, in connection with this provision of WIFIA, is that it be viewed as a completely voluntary option for states. They should have full authority to decide whether or not they wish to use this provision of WIFIA.

### ***Applicability of Cross-Cutters***

We believe that a "level playing field" should exist for WIFIA and the SRFs relative to Federal "cross-cutters" – not only the more recently applicable cross-cutters such Buy American Iron and Steel, but also the long-required cross-cutters, such as the Endangered Species Act and the Historic Preservation Act. In truth, we'd prefer that many of the cross-cutters be eliminated or simplified, since they tend to put the SRFs at a competitive disadvantage when potential borrowers consider other sources of funding that have no such cross-cutters. However, if they apply to the SRFs, they should certainly apply equally to WIFIA.

While new federal grants are decreasing and thus becoming a smaller percentage of the SRF financing made available each year, additional requirements on the grants and loans makes the

SRF more complex and ultimately less competitive in the market. If the SRF process becomes too onerous, borrowers may pursue alternative grant or loan options and the state programs could lose their influence on the projects that are undertaken.

Thank you very much for consideration of these comments. We would be happy to discuss them in more detail, at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Alexandra Dunn". The signature is fluid and cursive, with a long horizontal line extending to the right.

Alexandra Dunn  
Executive Director  
Environmental Council of the States

A handwritten signature in black ink that reads "Rick Farrell". The signature is cursive and somewhat stylized.

Rick Farrell  
Executive Director  
Council on Infrastructure Financing Authorities

A handwritten signature in black ink that reads "Julia Anastasio". The signature is cursive and elegant.

Julia Anastasio  
Executive Director  
Association of Clean Water Administrators

A handwritten signature in black ink that reads "James Taft". The signature is cursive and somewhat bold.

James Taft  
Executive Director  
Association of State Drinking Water Administrators