



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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Chairman

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Ranking Member

Jack Ruddy, Staff Director

Katherine W. Dedrick, Democratic Staff Director

September 22, 2023

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on “*Clean Water Infrastructure Financing: State and Local Perspectives and Recent Developments*”

I. PURPOSE

The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will meet on Thursday, September 28, 2023, at 10:00 a.m. ET in 2167 of the Rayburn House Office Building to hold a hearing entitled, “*Clean Water Infrastructure Financing: State and Local Perspectives and Recent Developments*.” This hearing will provide Members the opportunity to hear local and National perspectives on the current state of clean water infrastructure financing, including the Clean Water State Revolving Funds, and analyze recent changes and current issues in clean water infrastructure financing, including changes and additional funding provided under the *Infrastructure Investment and Jobs Act (IIJA)* (P.L. 117-58).¹

At the hearing, Members will receive testimony from witnesses representing the Council of Infrastructure Financing Authorities (CIFA), National Association of Clean Water Agencies (NACWA), United States Chamber of Commerce, and the Natural Resources Defense Council.

II. BACKGROUND

Clean Water Infrastructure

Clean Water infrastructure construction and maintenance is integral for local communities Nationwide. Industries, municipalities, households, and other entities all depend on wastewater infrastructure, including sewer pipe networks, for collection and transportation and onsite or centralized treatment facilities, to reduce pollution before being discharged into nearby waterbodies or reused for water, energy, or nutrient purposes.²

¹ *IIJA*, Pub. L. No. 117-58, 135 Stat. 429.

² See e.g., AM. SOC. OF CIVIL ENGINEERS, 2021 REPORT CARD FOR AMERICA’S INFRASTRUCTURE, WASTEWATER INFRASTRUCTURE, (2021), available at <https://infrastructurereportcard.org/wp-content/uploads/2020/12/Wastewater-2021.pdf> [hereinafter WASTEWATER INFRASTRUCTURE REPORT CARD].

There are more than 16,000 private and public wastewater treatment systems Nationwide, and approximately 80 percent of these serve communities with populations of 10,000 or fewer.³ As of 2021, per day, 62.5 billion gallons of wastewater are treated by centralized wastewater treatment plants, a number that is increasing due to population trend shifts towards urban communities.⁴ In addition, there is estimated over 800,000 miles of public sewers and 500,000 of private lateral sewers that connect to public sewer lines Nationwide.⁵ Many of the Nation's wastewater treatment plants were designed with a 40 to 50 year lifespan, and constructed in the 1970s; while wastewater pipes, which have a typical lifespan of 50 to 100 years, are 45 years old on average.⁶

Pursuant to the *Clean Water Act (CWA)*, the United States Environmental Protection Agency (EPA) periodically reports on the capital cost of wastewater infrastructure needs.⁷ The most recent EPA report on wastewater estimates was published in 2016 and estimates that wastewater treatment facilities would need \$271 billion over the next twenty years to continue to meet Federal standards for water quality.⁸

Clean Water Act Background

The *CWA* is the principal law governing water quality of the Nation's surface waters and provides a major Federal-state partnership to do so.⁹ Commonly referred to as the *CWA*, Congress enacted the 1972 amendments to the *Federal Water Pollution Control Act* with the objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."¹⁰ In doing so, the *CWA* sets out the regulatory requirements with which wastewater utilities must comply.

In addition to wastewater regulatory requirements, Title II of the *CWA* included a grant program that provided funding for wastewater treatment facilities construction and related objectives.¹¹ This grant program was funded through annual appropriations and utilized a state-by-state formula included in the *CWA* to allocate funds.¹² States then use the funding to make direct grants to cities for eligible projects, typically covering 55 to 75 percent of the total costs.¹³

³ See *id.*; see also ELENA H. HUMPHREYS, CONG. RSCH. SERV. (R47633), THE ROLE OF EARMARKS IN CWSRF AND DWSRF APPROPRIATIONS IN THE 117TH CONGRESS, (July 25, 2023), available at <https://www.crs.gov/Reports/R47633> [hereinafter CRS REPORT R47633].

⁴ WASTEWATER INFRASTRUCTURE REPORT CARD, *supra* note 2, at 153.

⁵ *Id.*

⁶ *Id.*

⁷ *CWA*, Pub. L. No. 92-500, 86 Stat. 816 [hereinafter *CWA*].

⁸ EPA, CLEAN WATERSHEDS NEEDS SURVEY (CWNS) REPORT TO CONGRESS – 2012, (Jan. 2016), available at https://www.epa.gov/sites/default/files/2015-12/documents/cwns_2012_report_to_congress-508-opt.pdf [hereinafter CWNS 2016].

⁹ *CWA*, *supra* note 7.

¹⁰ *Id.*

¹¹ ELENA H. HUMPHREYS & JONATHAN L. RAMSEUR, CONG. RSCH. SERV. (R46892), INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA): DRINKING WATER AND WASTEWATER INFRASTRUCTURE, (updated Jan. 4, 2022), available at <https://www.crs.gov/Reports/R46892> [hereinafter CRS REPORT R46892].

¹² *Id.*

¹³ *Id.*

Prior to the enactment of the *CWA* in 1972, however, the Federal Government administered a comparatively small aid program for municipal wastewater infrastructure, whereby the Federal Government allocated funding to the states based on population.¹⁴ A statutory formula for allocation did not exist.¹⁵

In contrast, under the *CWA* Title II program, Congress appropriated nearly \$52 billion between Fiscal Year (FY) 1973 and FY 1990, the largest nonmilitary public works appropriations since the Interstate Highway System.¹⁶

III. CLEAN WATER STATE REVOLVING FUNDS (CWSRF)

Throughout the following discussion, it is important to highlight that the CWSRF program is not to be confused with the Drinking Water State Revolving Fund (DWSRF) program, which is part of the *Safe Drinking Water Act*, and was authorized as part of the *Safe Drinking Water Act Amendments of 1996*.¹⁷ The Committee on Transportation and Infrastructure holds jurisdiction over the CWSRF, while the Committee on Energy and Commerce holds jurisdiction over the DWSRF.

Noting the amount of investment that had gone into wastewater infrastructure, Congress amended the *CWA* through the *Water Quality Act of 1987*.¹⁸ These amendments to the *CWA* established the Clean Water State Revolving Fund (CWSRF) program, which today serves as the primary Federal program for wastewater infrastructure funding.¹⁹ The *Water Quality Act of 1987* authorized the CWSRF program and appropriations to capitalize state revolving loan funds as Title VI of the *CWA*, in the process phasing out the Title II grant program after FY 1990.²⁰

Through the CWSRF program, each state and Puerto Rico maintain revolving loan funds to provide low-cost financing for approved water quality infrastructure projects.²¹ State revolving funds (SRFs) are available to make low-interest loans, buy or refinance local debt, subsidize or insure local bonds, make loan guarantees, act as security or guarantee of state debt, earn interest, and pay administrative expenses.²² SRF monies may also be used to implement

¹⁴ JONATHAN L. RAMSEUR, CONG. RSCH. SERV. (R47474), CLEAN WATER STATE REVOLVING FUND ALLOTMENT FORMULA: BACKGROUND AND OPTIONS, (Mar. 15, 2023), *available at* <https://www.crs.gov/Reports/R47474> [hereinafter CRS REPORT 47474].

¹⁵ *Id.*

¹⁶ CRS REPORT R46892, *supra* note 11.

¹⁷ *See Safe Drinking Water Act Amendments of 1996*, Pub. L. No. 104-182, 110 Stat. 1666.

¹⁸ *Water Quality Act of 1987*, Pub. L. No. 100-4, 33 U.S.C. §§ 1381-1387.

¹⁹ *Id.*; *see also* CRS REPORT 47474, *supra* note 14.

²⁰ CRS REPORT R47633, *supra* note 3; *see also* EPA, *About the Clean Water State Revolving Fund (CWSRF)*, *available at* <https://www.epa.gov/cwsrf/about-clean-water-state-revolving-fund-cwsrf> [hereinafter *About the CWSRF*].

²¹ JONATHAN L. RAMSEUR, CONG. RSCH. SERV. (R46471), FEDERALLY SUPPORTED PROJECTS FOR WASTEWATER, DRINKING WATER, AND WATER SUPPLY INFRASTRUCTURE, (updated Aug. 2, 2022), *available at* <https://www.crs.gov/Reports/R46471> [hereinafter CRS REPORT R46471].

²² *Id.*; *see generally* *About the CWSRF*, *supra* note 20.

other water pollution control programs such as nonpoint source pollution management and the National Estuary Program.²³

Funds to establish or capitalize the CWSRF programs are provided through Federal capitalization grants and state matching funds (generally equal to 20 percent of Federal grants).²⁴ States primarily use their funds to provide loans to cities and other eligible recipients. As a loan program, the CWSRFs are intended to be supported through the repayment of loans to states over time, creating a continuing source of assistance for other communities, in contrast to straight appropriations.²⁵ Loans are made at or below current market interest rates, including zero interest loans, and vary by state, applicant, and circumstance.²⁶

Although the CWSRF generally involves loans from the state to local wastewater actors, states are also authorized to provide “additional subsidization” to projects and their sponsors.²⁷ Additionally, states may also use CWSRF grants to provide additional subsidization for projects falling under specific categories of infrastructure projects, such as for reasons of water or energy efficiency.²⁸ In practice, this “additional subsidization” has taken the form of principal forgiveness and/or loans with negative interest.²⁹

Since FY 1989, Congress has provided more than \$56 billion in Federal capitalization assistance to the states.³⁰ In turn, this infusion of Federal capital to SRFs has leveraged over \$153.6 billion in direct assistance to communities through 44,555 agreements.³¹ According to EPA’s latest data, in 2021 alone, states funded over 1,700 new wastewater infrastructure projects totaling more than \$8.2 billion through the CWSRF in 2021.³²

IV. RECENT DEVELOPMENTS

In the past two decades, Congress has enacted several amendments to the *CWA* to promote the implementation and construction of wastewater infrastructure. Most recently, the *Infrastructure Investment and Jobs Act (IIJA)* reauthorized appropriations, provided supplemental funding, and amended the CWSRF program.³³ However, there are still other current issues that Congress and stakeholders are interested in.

In 2009, Congress enacted the *American Recovery and Reinvestment Act (ARRA)* to stimulate the United States economy and address a range of other policy objectives.³⁴ The *ARRA*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ 33 U.S.C. §1383(i); *see also* CRS REPORT R46892, *supra* note 11.

²⁸ *See* CRS REPORT R46892, *supra* note 11.

²⁹ *Id.*

³⁰ *See* CRS REPORT R47474, *supra* note 14.

³¹ EPA, CWSRF 2021 ANNUAL REPORT, (Dec. 2022), *available at* <https://www.epa.gov/system/files/documents/2022-12/2021-CWSRF-Annual-Report.pdf> [hereinafter CWSRF ANNUAL REPORT].

³² *Id.*

³³ *Infrastructure Investment and Jobs Act*, Pub. L. No. 117-58, 135 Stat 429 [hereinafter *IIJA*].

³⁴ *American Recovery and Reinvestment Act*, Pub. L. No. 111-5, 123 Stat 115.

provided \$4 billion in supplemental funding for the CWSRF for wastewater infrastructure projects, required states to use at least 50 percent of *ARRA* funds for additional subsidization, and authorized the “green reserve,”³⁵ which required states to use at least 50 percent of *ARRA* grants “for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.”³⁶

In the *Water Resources Reform and Development of 2014 (WRRDA)*, Congress amended the *CWA* to authorize CWSRF-eligible projects to include measures to manage, reduce, treat, or recapture stormwater; replacement of decentralized treatment systems such as septic tanks; energy-efficiency improvement at treatment works; reusing and recycling of wastewater and/or stormwater; and security improvements at treatment works.³⁷ *WRRDA* also allowed states under certain conditions to provide additional subsidization up to 30 percent of the state’s allotment.³⁸

America’s Water Infrastructure Act of 2018 (AWIA) amended the list of activities eligible under the CWSRF program to allow nonprofits to aid certain individuals for projects on existing decentralized wastewater systems or to connect an individual household to a centralized wastewater system.³⁹

Additionally, in recent years, the annual appropriations bill for the EPA has included additional requirements for states to use a portion of CWSRF funds for additional subsidies and for the green reserve.⁴⁰

Infrastructure Investment and Jobs Act (IIJA)

IIJA made several changes to the CWSRF program. For the first time since Congressional authorization for the program expired in 1994, section 50210(b) of *IIJA* reauthorized a total of \$14.65 billion in Federal appropriations for the CWSRF program between FYs 2022-2026.⁴¹

Division J, Title IV of *IIJA* provided \$11.7 billion in supplemental appropriations from FYs 2022-2026 for the CWSRF program, separate from the authorized level for annual appropriations.⁴² Additionally, *IIJA* provided \$1 billion in supplemental appropriations set aside specifically to address emerging contaminants.⁴³

³⁵ See e.g., *Green Project Reserve Guidance for the Clean Water State Revolving Fund (CWSRF)* (last updated May 19, 2023), available at <https://www.epa.gov/cwsrf/green-project-reserve-guidance-clean-water-state-revolving-fund-cwsrf>.

³⁶ *Id.*; see also CRS REPORT R47474, *supra* note 14.

³⁷ *Water Resources Reform and Development Act*, Pub. L. No. 113-121, 128 Stat. 1322 [hereinafter *WRRDA*]; *CWA* §§ 601(b)(13), 603(d)(1)(E), 603(i)(1)(B), 122, 603(c); see also CRS REPORT R47474, *supra* note 14.

³⁸ *WRRDA*, *supra* note 34; see also CRS REPORT R47474, *supra* note 14.

³⁹ *America’s Water Infrastructure Act of 2018*, Pub. L. No. 115-270, 132 Stat. 3876.

⁴⁰ See e.g. *Consolidated Appropriations Act of 2023*, Pub. L. No. 117-328, 136 Stat. 4793, (requiring states, to the extent that there are sufficient projects or activities eligible for assistance, to utilize not less than 10 percent of their CWSRF capitalization grant for projects to address green infrastructure, water or energy efficient improvements, or other environmentally innovative activities).

⁴¹ *IIJA* §50210(b), at 135 Stat 1169, *supra* note 33.

⁴² *Id.* at 135 Stat. 1396.

⁴³ *Id.*

IJJA also included other requirements for how CWSRF funds are to be spent. Section 50210(a) explicitly reserved a portion of CWSRF funds to be distributed as grants or grant substitutes to economically disadvantaged communities and for the implementation of energy-efficient or water-efficient technologies.⁴⁴ States are required for their supplemental *IJJA* appropriations to use 49 percent of their SRF capitalization grant amount as 100 percent principal forgiveness and grants.⁴⁵ For the supplemental appropriations to address emerging contaminant projects, states are required to use 100 percent of their capitalization amount as principal forgiveness or grants.⁴⁶

Other Current Issues

During the 117th Congress, providing funds directly to communities for wastewater infrastructure projects through community project funding resumed.⁴⁷ Some stakeholders are concerned about the way these funds have been targeted, as the annual appropriations bills for FYs 2022 and 2023 dedicated part of the CWSRF funding directly to community project funding.⁴⁸ Prior to the new practice, earmarked funds were provided separately from SRF appropriations.

Although the *CWA* originally directed EPA to publish a Clean Watersheds Needs Survey (CWNS) biennially, the last CWNS was published in 2016, documenting wastewater infrastructure needs from 2012.⁴⁹ *IJJA* directed EPA to conduct a needs assessment for all CWSRF-eligible projects by November 2023, and every four years following.⁵⁰

The funding allocation percentages when the CWSRF program was originally created generally remain in effect today.⁵¹ Although the legislative history does not contain a specific analysis of the numbers behind the allocation formulas, the formula represents a negotiation between the House and Senate and provide each state with at least half of a percent of the total appropriation in any given year.⁵²

V. OTHER CLEAN WATER INFRASTRUCTURE PROGRAMS

Although the CWSRF program is generally considered the principal Federal source for wastewater project funding, a number of related authorities for funding exist.

The *Water Infrastructure Finance and Innovation Act (WIFIA)* authorizes EPA to provide direct loans or loan guarantees for a wide range of drinking water and wastewater

⁴⁴ *Id.* at 135 Stat 1169; *see also* H. COMM. ON TRANSP. & INFRASTRUCTURE, JURISDICTION AND ACTIVITIES OF THE SUBCOMM. ON WATER RES. AND ENVIRONMENT, 118th Cong., (2023) (on file with Comm.) [hereinafter JURISDICTION AND ACTIVITIES REPORT].

⁴⁵ *See* CRS REPORT R47633, *supra* note 3; *see also* CWSRF ANNUAL REPORT, *supra* note 31.

⁴⁶ *See* CRS REPORT R47633, *supra* note 3; *see also* CWSRF ANNUAL REPORT, *supra* note 31.

⁴⁷ *See* CRS REPORT R47633, *supra* note 3.

⁴⁸ *Id.*

⁴⁹ CWNS 2016, *supra* note 8; *see also* CRS REPORT R47474, *supra* note 14.

⁵⁰ *CWA*, *supra* note 7, §609.

⁵¹ CRS REPORT R47474, *supra* note 14.

⁵² *Id.*

projects.⁵³ In contrast to the CWSRF, under this authority, EPA provides credit assistance directly to eligible project recipients and may fund projects that may be ineligible for CWSRF assistance or are too large for traditional CWSRF funding.⁵⁴

The *Consolidated Appropriations Act of 2001* authorized EPA to establish a new grant program in the *CWA* to address combined sewer overflows, sanitary sewer overflows, or stormwater.⁵⁵ Projects under this grant program are subject to the same requirements as the CWSRF program. This authority received its first Federal appropriations in FY 2020.⁵⁶ *IJA* also amended this grant program, requiring EPA to work with states to use at least 25 percent of grant awards on projects in rural communities with populations of fewer than 10,000 and financially distressed communities, as defined by each state.⁵⁷

VI. WITNESSES

Ms. Lori Johnson

Assistant Chief, Financial Services Division
Oklahoma Water Resources Board
on behalf of Council of Infrastructure Financing Authorities

Mr. Todd P. Swingle, P.E.

Chief Executive Officer and Executive Director
Toho Water Authority, Kissimmee, FL
on behalf of National Association of Clean Water Agencies

Mr. James M. Proctor, II

Senior Vice President and General Counsel
McWane Inc.
on behalf of United States Chamber of Commerce

Ms. Rebecca Hammer

Deputy Director, Federal Water Policy
Natural Resources Defense Council

⁵³ *WRRDA*, *supra* note 37; *see generally* EPA, *What is WIFIA?*, available at <https://www.epa.gov/wifia/what-wifia>; *see also* CRS REPORT R46471, *supra* note 21.

⁵⁴ CRS REPORT R46471, *supra* note 21.

⁵⁵ *Consolidated Appropriations Act of 2001*, Pub. L. No. 106-554; *CWA* § 221; *see also* JURISDICTION AND ACTIVITIES REPORT, *supra* note 44.

⁵⁶ JURISDICTION AND ACTIVITIES REPORT, *supra* note 44.

⁵⁷ *Id.*; *IJA*, *supra* note 33, § 50204.