

May 10, 2018

The Honorable John Barrasso
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Barrasso and Ranking Member Carper:

On May 8 our associations wrote to you in support of the introduced version of S. 2800, America's Water Infrastructure Act of 2018. We support that version of the bill in large part because it includes, among other provisions, a two-year extension of EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program in its current form.

During the committee's subsequent May 9 hearing on this legislation we observed a significant degree of discussion of another bill: S. 2364, the Securing Required Funding for Water Infrastructure Now (SRF WIN) Act. The SRF WIN proposal is not currently part of S. 2800, and therefore was not addressed in our May 8 letter. However, given the amount of attention it received during the hearing we write to you again today to share our concerns about this proposal and urge you to omit the SRF WIN Act from any manager's amendment or other revisions that may be made to the introduced version of S. 2800.

We believe that SRF WIN Act is a fundamentally flawed proposal that, if enacted, would pose a severe threat to the future viability of the WIFIA program. For these reasons, our organizations will withdraw our support for S. 2800 if it advances with SRF WIN provisions.

It would be particularly disappointing for the committee to add the SRF WIN Act to S. 2800 when the former proposal has not been the subject of hearings where our associations – the stakeholders who were most directly involved with Congress' creation of WIFIA in 2014 – would have an opportunity to explain our concerns to the committee.

If such a hearing had been organized to consider the SRF WIN Act, we would have made a number of observations and recommendations to the committee. In response to the commentary on the SRF WIN Act that was shared with the committee on May 9, we would like to share our perspectives with you in this letter, so you may have a more complete understanding of why we so strongly oppose adding the SRF WIN Act to an otherwise strong WRDA bill.

WIFIA Background and History

Congress created the WIFIA program at EPA with a five-year authorization as part of the Water Resources Reform and Development Act in 2014. A product of close collaboration between multiple water sector stakeholders and bipartisan infrastructure advocates in Congress, WIFIA was carefully designed to complement EPA's existing State Revolving Fund (SRF) programs, which predominantly help communities undertake relatively modest infrastructure improvements necessary to achieve or maintain compliance with public health and environmental standards.

The general focus of the SRFs on smaller-scale projects is evidenced in EPA's data and state practices. For example, EPA's 2016 Drinking Water SRF Annual Report shows that through June 30, 2016 the DWSRF had provided a total of nearly \$32.5 billion in funding assistance to communities nationwide through 12,827 individual assistance agreements – an average of just over \$2.5 million per loan. Small communities serving 10,000 people or fewer received 9,044 of these assistance agreements since the program's inception – about 70 percent – while metropolitan water systems serving more than 100,000 people obtained a total of 897 DWSRF loans through 2016.¹ In addition, some states place limits restrict access to SRF loans by large cities, with the goal of ensuring that sufficient funding remains available for smaller projects and communities.

In contrast, WIFIA was designed to deliver low-cost financing for large-scale drinking water and wastewater infrastructure projects expected to cost in excess of \$20 million. But cities and towns of all sizes are eligible to take part in WIFIA, and the program offers special eligibility incentives to rural communities: at least 15 percent of annual WIFIA funding is reserved for projects in rural areas (defined as communities serving not more than 25,000 people), and these projects need only cost at least \$5 million – rather than \$20 million – to qualify for funding. Congress also included a specific provision in the WIFIA statute that allows state SRF agencies to compile multiple small projects into a single WIFIA application, creating yet another avenue for small communities to access the program.

Congress made its first appropriation to support WIFIA loans in 2017, and after receiving 43 initial letters of interest EPA invited 12 projects to apply for funding. Those loans are beginning to be finalized, and in the program's first year WIFIA is expected to offer a total of \$2.3 billion in water infrastructure loans – all from an initial FY17 appropriation of \$25 million. The recently enacted FY18 omnibus appropriations bill more than doubles funding for WIFIA loans to \$55 million – and in April EPA announced the availability of approximately \$5.5 billion in new WIFIA credit assistance that could help support about \$11 billion in total water infrastructure investment.

We fear that all of this progress could be put at risk due to the SRF WIN Act. Supporters of this bill claim it would make WIFIA more accessible to small communities and generate additional funds for state SRF programs, but in reality it would undermine the purpose and ability of WIFIA to effectively leverage limited federal dollars to support major water and wastewater infrastructure investments. Simply put, the SRF WIN Act is unnecessary, inequitable, and a threat to WIFIA's viability.

The SRF WIN Act is Unnecessary

The simplest argument against the SRF WIN Act is that it is unnecessary because the existing WIFIA program already allows state SRF agencies to compile multiple smaller-scale drinking water and wastewater projects together into a single WIFIA loan application. Specifically, Section 5026(8) of the WIFIA statute extends eligibility to “a combination of projects ... for which a State infrastructure financing authority submits to the Administrator a single application,” and which are eligible for SRF assistance through the Clean Water or Drinking Water SRFs. This is precisely how the 2017 WIFIA application of the Indiana Finance Authority, which proposed to “expand the reach of its Clean Water and Drinking Water State Revolving Fund programs and fund dozens of additional projects in communities across the state,” was deemed eligible for WIFIA assistance.

¹ https://www.epa.gov/sites/production/files/2017-09/documents/2016_dwsrf_annual_report_508.pdf

The upcoming round of WIFIA funding that was announced in April will bring similar opportunities for state SRF agencies. In fact, an April 4 letter to the nation's governors from EPA Administrator Scott Pruitt told states to "think creatively" when contemplating potential WIFIA projects, and urged them to submit proposals that "expand the reach of your State Revolving Fund program with WIFIA funds, as Indiana is planning to do with 2017 funds."² This makes abundantly clear that no new congressional action is necessary to enable state SRF agencies to take advantage of WIFIA's leveraging potential.

Given these facts, it is unclear what purpose the SRF WIN Act would serve. The \$1 billion authorized by the legislation over five years would be available only to state infrastructure financing authorities, for use exclusively on projects that are included on a state's Drinking Water or Clean Water SRF intended use plan. But again, these projects are already eligible to receive loans under the current WIFIA program. Moreover, the current WIFIA program also sets aside at least 15 percent of funding made available annually for projects serving rural communities. This means that in FY18, \$825 million of the \$5.5 billion of available WIFIA assistance will be offered first to rural drinking water and wastewater projects. There is clearly no need for a separate authorization to ensure that WIFIA offers loan opportunities to small communities.

Meanwhile, under the SRF WIN Act individual communities that wish to finance large-scale water and wastewater projects would be unable to take advantage of any of the funding made available through the new \$1 billion authorization – leaving many potential large-scale projects across the country on the sidelines.

The SRF WIN Act is Inequitable

We also oppose the SRF WIN Act because it is inequitable in that it would establish preferential application, evaluation, and financing rules for state SRF agencies that applicants to the original WIFIA program would not have an opportunity to access. There is no reason why these special benefits should only be available to state-compiled projects, and not individual communities that may seek WIFIA assistance on their own.

The examples of the uneven playing field created by the SRF WIN Act are numerous. Under the legislation, states applying for SRF WIN loans would be exempt from WIFIA's application fees, exempt from caps that limit WIFIA financing to no more than 49 percent of a project's total cost, and exempt from loan restrictions that specify that the interest rate on a WIFIA loan may not be less than the prevailing Treasury rate. Meanwhile, EPA would be required to review SRF WIN applications on an expedited basis – a benefit not available to traditional WIFIA applicants.

Other special benefits extended to state applications by the SRF WIN Act could invite instances of abuse, such as the waiver from the selection criteria under Section 5028(b) of the current WIFIA statute that EPA must follow when evaluating potential projects. These criteria, which were developed by Congress with extensive stakeholder input, ensure that EPA's process of evaluating WIFIA applications is neutral and transparent, and that political considerations are not a factor when projects are being selected. The SRF WIN Act, in contrast, would completely bypass state applications under the new authorization from the selection criteria, and direct EPA to award funding based only on "need" as determined by the

² https://www.epa.gov/sites/production/files/2018-04/documents/al_4-4-18.pdf

Administrator. The bill offers no guidance on what constitutes “need” – is it the number of water infrastructure projects awaiting funding in a state? The degree to which projects may address a state’s public health concerns? Whether a state’s projects are seen as credit risks and unable to secure financing elsewhere? The SRF WIN Act is silent on how “need” shall be measured, which could lead to troubling opportunities for abuse or favoritism as funding leveraged from up to \$1 billion in federal dollars are appropriated.

The SRF WIN Act’s total elimination of selection criteria is even more puzzling due to the fact that the current WIFIA statute already offers modified selection criteria for WIFIA applications submitted by state SRF agencies. Section 5028(b)(3) of the present WIFIA law mandates a “special rule for combined projects” that applies to EPA’s consideration of these applications, with EPA directed to not consider “the extent to which [a state SRF agency’s] project is nationally or regionally significant, with respect to the generation of economic and public health benefits.” In other words, Congress has already stipulated separate selection criteria upon which EPA must consider WIFIA applications put together by state SRF agencies, in recognition that many of the smaller-scale projects that are compiled into these applications are less likely to be viewed as nationally or regionally significant. The SRF WIN Act ignores this existing accommodation of state-compiled projects in its effort to exempt them from WIFIA’s selection criteria altogether.

Another example of inequality in the SRF WIN Act is how the bill would continue the current eligibility of state-compiled projects under the existing WIFIA program, while making only these projects eligible for funding through the newly established authorization as well. As a result, state SRF agencies would have the option of submitting applications representing the same compilation of projects to two different WIFIA programs, each with its own eligibility rules. This structure is at best confusing, and will only complicate the ability of individual communities to access WIFIA for their own major projects.

In sum, the SRF WIN Act does not offer a level playing field to individual communities and water utilities that may wish to access WIFIA loans because it denies them the opportunity to access the preferential application, evaluation, and financing rules that would be available to state SRF agencies. And while there may be reasonable arguments in favor of making some reforms to the WIFIA program (such as allowing loan funds to cover more than 49 percent of a project’s total cost and eliminating application fees) it would make little sense to offer these benefits only to applications submitted by state SRF agencies. By giving state-compiled projects a separate dedicated authorization – while also continuing to allow states to compete against individual water and wastewater projects through the original WIFIA program – the SRF WIN Act would turn WIFIA away from its mission to be a source of low-cost supplemental loans for regionally and nationally significant water infrastructure projects.

The SRF WIN Act Puts WIFIA’s Viability At Risk

One of the strongest benefits of the WIFIA program today is its ability to leverage a relatively small initial federal investment into scores of additional infrastructure funding dollars. Indeed, the agency plans to leverage the \$25 million appropriated for WIFIA projects in FY17 into \$2.3 billion worth of loans to communities (a 92 to 1 ratio), and in FY18 EPA expects to do even better, leveraging \$55 million into \$5.5 billion. These robust rates enable the federal government to get a tremendous “bang for the buck” when appropriating funds for water and wastewater infrastructure.

But WIFIA's leveraging ability would dramatically decline under the SRF WIN Act, because the new bill would require EPA to offer much lower interest rates for projects funded through the new program. Section 5029(b)(4) of the current law specifies that the interest rate on a WIFIA loan "shall be not less than the yield" on a U.S. Treasury bill with a similar maturity date. This sets a floor below which the interest rate of a WIFIA loan may not fall, and does not establish any maximum interest rate.

The SRF WIN Act takes the opposite approach by mandating that a loan under the new program "shall be equal to the yield" on a Treasury bill of a similar maturity. This locks in a guaranteed rate for SRF WIN projects, but the bill then goes further and specifies two lower tiers of interest rates for states that received less than two percent of the total pot of Clean Water and Drinking Water SRF funds distributed to states in the most recent fiscal year. This rate would initially be set at 80 percent of the Treasury rate, unless there fails to be "sufficient demand" for loans from eligible states at this rate. In this case, EPA would have the option to offer loans at between 50 and 80 percent of the Treasury rate, again only to states that received less than two percent of total available SRF funding in the most recent fiscal year.³

While all borrowers would appreciate the opportunity to access lower interest rates, this does come at a cost: the lower the interest rate, the higher the interest rate subsidy must be provided by EPA. And the higher the subsidy, the lower the leveraging ratio of the WIFIA program. The lower the leveraging ratio, the fewer total dollars will be available through WIFIA to communities to access for water infrastructure projects.

The potential reduction to WIFIA's leveraging ability would be severe. According to an analysis conducted by EPA, the typical SRF WIN loan subsidized at interest rates of between 50 and 80 percent of the Treasury rate would leverage federal dollars at rates of only between 3.66 to 1 and 8.50 to 1. This is significantly below the 92 to 1 rate in place for loans to be awarded through the 2017 round of funding, as well as the 100 to 1 rate anticipated for 2018. It means that every dollar appropriated to the new SRF WIN program will support far less infrastructure investment than it would have if it had been directed to the original WIFIA instead. In other words, the SRF WIN Act would reduce, not expand, WIFIA's total leveraging ability and result in fewer opportunities for communities across the country to access low-cost loans for major water infrastructure projects.

This subcommittee should also seriously consider whether states that receive lower amounts of annual SRF funding should automatically be offered preferential interest rates, as the SRF WIN Act would do. In the case of the Drinking Water SRF, funding is allocated to states based on the results of EPA's quadrennial Drinking Water Needs Survey, with states that report higher drinking water infrastructure investment needs awarded a greater share of DWSRF funding. Those states that receive lower shares of DWSRF funding have reported fewer total drinking water infrastructure needs than others – offering little justification for why the SRF WIN Act should offer better interest rates to states whose water infrastructure needs are reported to be less severe.

³ The SRF WIN Act also offers these reduced interest rates to states for which the president has declared a major disaster under the Stafford Act since January 1, 2017, provided that the loan is used to repair drinking water or wastewater infrastructure damaged by that disaster. Between that date and May 1, 2018 the president made 155 major disaster declarations, though all did not involve damage to drinking water or wastewater infrastructure. But because the SRF WIN Act separately requires projects to appear on a state's Clean Water or Drinking Water SRF intended use plan as a condition of receiving funding, the proposal as introduced is unlikely to represent a quick and efficient source of low-cost disaster recovery assistance.

The provision in the SRF WIN Act that guarantees lower interest rates to states that received less than two percent of total SRF funding in the most recent fiscal year also appears to be both arbitrary and extremely broad. According to EPA's data for the 2017 fiscal year, 35 states, plus the District of Columbia and Puerto Rico, received less than two percent of the year's total distribution of SRF loans.⁴ So, had the SRF WIN Act been in place, fully 70 percent of states, in addition to the District of Columbia and Puerto Rico, would be entitled to access interest rates as low as half of the Treasury rate. The remaining 15 states with higher reported water infrastructure needs (including Illinois, New Jersey, Maryland, Massachusetts, and New York, among others) could only borrow SRF WIN funds at the full Treasury rate.⁵ Meanwhile, individual communities and others applying to the original WIFIA program from any state across the nation would continue to incur rates somewhere above that level.

There appears to be no rational policy basis for these interest rate preferences, but the net effect is for the SRF WIN Act to artificially select winners and losers among state applicants while reducing the overall leveraging power of the WIFIA program. And if WIFIA is not able to effectively leverage its appropriation, its value as a source of affordable water infrastructure funding will markedly decrease.

Finally, we would encourage you to carefully consider the future implications the SRF WIN Act could carry for existing appropriations to the Drinking Water and Clean Water SRFs, as well as the original WIFIA program. In fact, the SRF WIN Act appears to itself acknowledge that it could pose a threat to these programs' regular annual appropriations, as it includes a provision attempting to prevent Congress from appropriating any SRF WIN funding during a fiscal year in which the SRFs or WIFIA do not receive appropriations equal to at least their fiscal year 2018 amounts.

This provision appears to recognize that the SRF WIN Act could be seen in the future as an alternative to traditional SRF and WIFIA appropriations; if not, then why include the provision at all? But given claims that the bill could leverage billions of dollars in additional funding for water infrastructure each year, all from an annual authorization of just \$200 million, one may speculate whether a future Congress may seek to achieve budget savings by reducing or eliminating regular annual appropriations for the SRFs and WIFIA from EPA's budget. Of course, one cannot predict what actions lawmakers may or may not take in the future, but the inclusion of the "no impact on other federal funding" language in the SRF WIN Act indicates that the bill's supporters believe this to be a possibility.

Ultimately, we do not believe the SRF WIN Act's attempt to preserve FY18 funding levels for the SRFs or WIFIA would be successful. Nothing in the bill could stop future appropriators from waiving this provision for a given fiscal year and proceeding to fund SRF WIN, the SRFs, and WIFIA at whatever levels they choose. So in reality the bill does nothing to protect annual SRF or WIFIA appropriations that could be put at risk as a consequence of the SRF WIN Act.

⁴ EPA's data on annual DWSRF allotments is available at <https://www.epa.gov/drinkingwatersrf/annual-allotment-federal-funds-states-tribes-and-territories#tab-6>. The data for annual CWSRF allotments is available at <https://www.epa.gov/cwsrf/clean-water-state-revolving-fund-cwsrf-allotments-federal-funds-states>. In sum EPA reports making \$2,149,289,000 in DW and CW SRF funding available to states in FY17.

⁵ The following states received more than two percent of total DW and CW SRF funding in 2017 (\$42,985,780), which would have made them ineligible for reduced interest rates had the SRF WIN Act been in effect for that year: California, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Wisconsin.

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Conclusion

For the reasons outlined above, we strongly oppose the SRF WIN Act and fear that if enacted it would pose a serious threat to the WIFIA program and divert needed resources away from the major drinking water and wastewater projects it was designed to aid. Moreover, the evidence is clear that the existing program offers ample opportunities for small communities and states to access low-cost WIFIA loans, so there is no need for such a dramatic restructuring of the statute – especially considering the WIFIA program is still in the process of distributing its very first round of loans.

Our associations also wish to reiterate our support for S. 2800, America’s Water Infrastructure Act of 2018, as introduced on May 8. We immediately endorsed this legislation based on its extension of the existing WIFIA program and our understanding that the committee only planned to make minor and uncontroversial technical changes to the proposal during a subsequent markup session. While we still hope that this is the case, we want to make clear that we will strongly oppose this or any other legislation that is amended to include components of the SRF WIN Act.

We remain willing to work with you to develop an alternate path forward that could further clarify state and small community access to WIFIA while leaving the existing program intact. We would be happy to discuss such options with you at your convenience.

Sincerely,

American Water Works Association
Association of Metropolitan Water Agencies
Water Environment Federation

cc: Environment and Public Works Committee members