



February 17, 2017

EPA Docket Center
Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Ave. NW.
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OW-2016-0568

The Association of Metropolitan Water Agencies is pleased to offer comments on the proposed rule “Fees for Water Infrastructure Project Applications Under WIFIA.” As an organization of the nation’s largest publicly owned drinking water utilities, AMWA is a strong supporter of the Water Infrastructure Finance and Innovation Act, and is eager for the WIFIA program to become operational and begin offering low-cost loan assistance this year. We appreciate that this proposed rule would help achieve this objective.

While AMWA recognizes EPA’s authority to collect fees to offset costs associated with operating the WIFIA program, we strongly encourage the agency to minimize these fees to the greatest extent possible. Especially during WIFIA’s critical pilot phase, exceedingly high fees could deter potential applicants from pursuing funding opportunities through the program. AMWA also supported provisions included in the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), signed into law on December 16, 2016, that allow entities to finance fees associated with a WIFIA loan rather than paying the full fee balance up front. We expect EPA will incorporate this statutory change into the final fee rule.

The following comments pertain to the five fees outlined in § 35.10080 of the proposed fee rule:

Application Fee

AMWA understands that EPA will incur new administrative expenses to review WIFIA applications and that WIFIA’s authorizing statute, P.L. 113-121, gives EPA the authority to “establish fees at a level sufficient to cover all or a portion of” these costs. EPA therefore proposes to make a non-refundable application fee due “upon submission of the complete application.”

However, this proposal is in conflict with reforms Congress made to the WIFIA program through Section 5008 of P.L. 114-322 which specify that, “On request of an eligible entity ... the Administrator ... shall allow [WIFIA] fees ... to be financed as part of the loan.” AMWA believes the final rule must clearly recognize that an applicant may elect to finance its application fees, and should also detail how

BOARD OF DIRECTORS

PRESIDENT

Scott Potter
Nashville Metro Water
Services

VICE PRESIDENT

Mac Underwood
Birmingham Water Works
Board

TREASURER

Steve Schneider
Saint Paul Regional Water
Services

SECRETARY

Angela Licata
New York City DEP

Jerry Brown
General Manager
Contra Costa Water District

Irene Caminer
Chicago Department of Water
Management

John Carman
Fort Worth Water Department

Rudolph Chow
Baltimore Department of
Public Works

John Entsminger
Las Vegas Valley Water District

Julia J. Hunt
Trinity River Authority of Texas

Robert Hunter
Municipal Water District of
Orange County

Carrie Lewis
Milwaukee Water Works

James S. Lochhead
Denver Water Department

Ron Lovan
Northern Kentucky Water
District

Sue McCormick
Great Lakes Water Authority

Brett Jokela
Anchorage Water &
Wastewater Utility

Charles M. Murray
Fairfax Water

William Stowe
Des Moines Water Works

John P. Sullivan, Jr.
Boston Water and Sewer
Commission

Jeffrey Szabo
Suffolk County Water Authority

Douglas Yoder
Miami-Dade Water and Sewer
Department

**CHIEF EXECUTIVE
OFFICER**

Diane VanDe Hei

an applicant would make this request to the agency. Additionally, the final rule should describe how an applicant that ultimately does not obtain a WIFIA loan would finance any application fee that it may still be required to pay. Because P.L. 114-322 allows any “eligible entity” (and not only WIFIA loan recipients) to finance fees, then EPA’s final rule may not require an entity that does not ultimately obtain a loan to immediately pay its fee balance in full.

AMWA appreciates that EPA may adjust the amount of the application fee in the future based on the agency’s experience in the first round of WIFIA funding. EPA seeks comment on the process through which changes to the application fee structure should be announced, and AMWA believes it would be most efficient for EPA to publish application fee levels for a given round of WIFIA funding within the notice of funding availability that will advertise each round of funding. This will provide potential applicants with a full picture of the costs and benefits of a WIFIA loan at the time of the NOFA, thus allowing them to make an informed decision whether to consider submitting a letter of interest at that time.

In terms of the application fee levels initially proposed, AMWA believes that application fees of \$25,000 for projects serving communities of 25,000 people and below and \$100,000 for projects serving all other communities are significant. But the fact that applicants will have the option to finance these fees rather than paying them in full at the time of application makes them somewhat less daunting than they would be otherwise. Still, AMWA urges EPA to minimize these fees as much as practicable to promote widespread participation in the WIFIA program.

Finally, AMWA supports language in the proposed rule that makes clear that the value of an application fee paid by an applicant will be credited toward the balance of the credit-processing fee that would be due at loan closing.

Credit Processing Fee

AMWA understands the need for EPA to charge credit processing fees to offset costs associated with obtaining expert assistance in reviewing the financial viability of proposed projects, including from financial advisors and law and engineering firms. However, we recommend that EPA provide applicants with assurance and documentation to demonstrate that the fees charged by these expert firms are competitive and fall within a reasonable market range. We also believe that EPA should select these firms through a process that collects bids in response a request for proposals that identifies bids with the lowest cost as a major selection criteria.

AMWA welcomes EPA’s stated intent to waive all or a portion of credit processing fees in the event that Congress delivers sufficient administrative funding to the agency, and we believe any credit processing fee relief that can be provided should be done in an equitable manner after first offering relief to projects that primarily serve low-income populations.

EPA's preamble to the proposed rule suggests three approaches to delivering credit processing fee relief in a given year: reducing fees equally among all loans; reducing fees for projects serving not more than 25,000 people, and reducing fees for projects serving populations with a median income that is 80 percent or less of the state's median household income. AMWA believes a combination of these approaches is best.

Specifically, when EPA has excess funds available to alleviate credit processing fees, the agency may wish to first reduce or eliminate fees that would be paid by the sponsors of projects that primarily serve a population representing a median household income of 80 percent or less than its state's median. This approach will target credit-processing fee relief toward projects in communities that are likely facing some of the most significant water affordability challenges, and whose residents could most benefit from both low-cost financing and fee relief.

Any remaining funding available after eliminating credit-processing fees in these low-income communities should be used to reduce the credit-processing fees for all of that year's remaining WIFIA projects by a pro-rata percentage of the total credit-processing fees paid by the sponsor of each project. Any forgiveness of credit-processing fees should be calculated on the balance of these fees after the credit for payment of an application fee has been applied.

Finally, the proposed rule does not address how an applicant could choose to finance their credit processing fees pursuant to Section 5008 of P.L. 114-322. The final rule should outline this process and ensure proper notification so all applicants are aware of this option.

Servicing Fee

EPA estimates annual servicing fees to fall between \$12,000 and \$15,000 per loan, with the precise level for each particular project determined at the time of closing. AMWA does not object to EPA's plan to charge annual servicing fee to recover loan servicing costs incurred by EPA, but we seek clarity on whether servicing fee costs may increase over the life of the loan to account for inflation. If inflation may allow annual servicing fees to increase, then recipients must be provided with ample notice ahead of any increase. We further advise that the agency must give WIFIA recipients the option to finance servicing fees along with the loan principal, pursuant to Section 5008 of P.L. 114-322.

Optional Supplemental Fee

This fee would give WIFIA applicants the option to "buy down" the budget authority required for the loan, to enable an applicant to obtain a loan if EPA would otherwise have insufficient budget authority to offer it in a given year. AMWA believes this is a reasonable option to have available, at the discretion of the applicant.

Extraordinary Expenses Fee

This fee would offset any additional expenses EPA may incur in monitoring a project that may experience technical, financial or legal complications following the issuance of a WIFIA loan. AMWA understands that this fee would only be charged to WIFIA recipients whose projects experience these difficulties and which require additional oversight by the agency, and the association does not object to it as long as a detailed invoice of additional fee expenses is clearly documented and presented to the loan recipient.

Conclusion

AMWA is grateful for the opportunity to comment on the proposed rule “Fees for Water Infrastructure Project Applications Under WIFIA.” AMWA will also submit separate comments on the interim final rule “Credit Assistance for Water Infrastructure Projects.”

We hope you find these comments constructive, and we look forward to the successful implementation of WIFIA as soon as possible.

Sincerely,



Diane VanDe Hei
Chief Executive Officer