



January 26, 2015

Mr. Andrew Sawyers, Director  
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U.S. Environmental Protection Agency  
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Dr. Peter Grevatt, Director  
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Dear Messrs. Sawyers and Grevatt:

As the U.S. Environmental Protection Agency prepares to implement the Water Infrastructure Finance and Innovation Act (WIFIA), we write to thank you for your strong leadership in the series of listening sessions held around the country. They provided very important opportunities for a genuine exchange of ideas and increased understanding about this important program.

As stakeholders in the new program we believe WIFIA offers a tremendous opportunity to help address the increasing funding gap between water infrastructure needs and available funding that burdens communities across the nation, and appreciate the EPA's efforts to collect feedback on how to best develop the program framework. EPA's listening sessions, webcasts, and other outreach events have provided stakeholders a fantastic opportunity to learn more about the new program and provide their insights. We believe the involvement of stakeholders from across the water sector demonstrates a strong vote of confidence in WIFIA, and we have received encouraging reports from potential applicants as a result of those EPA outreach efforts.

Another strong vote of confidence came this fall, when Congress appropriated \$2.2 million in FY15 funds to support EPA's "hiring and staffing needs to implement" WIFIA. With these resources in hand, we believe the Obama Administration must now demonstrate its own commitment to WIFIA by seeking a full appropriation of \$25 million for the program as part of its fiscal year 2016 budget request. Our organizations detailed the importance of including funding in the FY16 budget in our October 31, 2014, letter to Administrator McCarthy, but we would like to reemphasize that the budget should include full funding for WIFIA *and* the State Revolving Fund (SRF) programs so that communities have access to as much funding as possible to address the wide range of eligible water infrastructure needs.

As EPA continues the process of working out the program details in the coming months, we would like to reiterate several points which we believe are critical to WIFIA's ultimate success. These recommendations build upon our earlier recommendations, and in particular the June 2014 *Key Issues in WIFIA Implementation: The Water Utility Perspective*. We urge you to keep these points in mind as you work to bring WIFIA into full implementation:

#### **Encouraging Project Diversity**

The WIFIA statute makes clear that Congress intends for a diversity of projects to be backed with WIFIA funding. Section 5026 details a broad scope of projects eligible for funding, and Section 5023 directs EPA to select for funding projects representing "a diversity of project types and geographical locations." We support the priority placed on choosing a wide range of project types, as resulting information on WIFIA's ability to deliver financing to many different types of water and wastewater projects will prove critical in evaluating WIFIA's ultimate success during this pilot phase.

Going forward, such data collected during the pilot phase will help EPA and stakeholders identify which types of projects are best suited to advance with the help of WIFIA dollars, and will provide valuable information to Congress when the program is reviewed for reauthorization in fiscal year 2020. *This does not mean that any particular project should be passed over for funding simply because a similar project has already received a loan; but only that EPA should encourage applications from a variety of projects that are as representative as possible of the criteria laid out in the statute.*

### **Choosing Among Eligible Projects**

Section 5028(b) of the WIFIA statute outlines selection criteria EPA is to follow when choosing which eligible project applicants will receive WIFIA financing in a given year. As was discussed during several listening sessions, EPA is not required to weigh each of these criteria equally; some will prove to be more relevant than others when assessing project applications. For example, projects that use new or innovative approaches, that would proceed more quickly with WIFIA assistance, and that carry significance in terms of their generation of public benefits may serve as especially valuable case studies when Congress reviews the success of the WIFIA pilot program. And while the law does give EPA the authority to consider additional selection criteria beyond what is listed, we believe EPA should do so with caution, and ensure that any criteria used ultimately lead to loans that back high-quality applications.

### **Consultation With States**

During the listening sessions EPA staff indicated a willingness to work with potential applicants and the SRF programs to aid the application process. We welcome this cooperation but believe EPA must balance these efforts with a commitment to avoid introducing unnecessary burdens or delays into the process through which utilities will receive WIFIA financing.

One area in which EPA must particularly avoid delays is in its required notification to a state when a WIFIA application is received for a project within that state. Congress added this provision to prevent communities with SRF-eligible projects from bypassing the SRF program in pursuit of a WIFIA loan, and we support this objective. We would not support using this provision to broadly require all WIFIA applicants to work through additional administrative requirements or wait out excessive delays if the project in question would otherwise stand little chance of receiving meaningful SRF funding assistance.

Section 5028 of the WIFIA statute requires EPA to notify a state within 30 days of receiving a WIFIA application for a project within that state. Then the law grants the state 60 days from that point to decide whether to commit SRF funds to the project in an amount and at terms at least as favorable as is being sought from WIFIA. If the state chooses to commit such funds, the law provides the state with 180 days from the initial notification to enter into a formal funding agreement with the project sponsors. This well-defined schedule is designed to keep the financing process moving forward, and to avoid prolonged periods of funding uncertainty that would act as a disincentive to approaching WIFIA or undercut WIFIA's ability to efficiently commit funds to waiting projects.

Conversely, it would be problematic if a state's decision on awarding SRF funds was delayed beyond this timeframe. Such delays would not only reduce communities' ability to begin water infrastructure projects in a timely manner, but could also threaten the viability of WIFIA itself, as these delays would prevent funding from reaching projects and therefore reduce the number of successful projects during

Mr. Andrew Sawyers  
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January 26, 2015  
Page 3 of 3

the program's critical pilot phase. To keep the process moving, we will encourage our members to inform state SRF programs about projects before they are submitted to WIFIA, and we ask you to encourage SRF agencies to issue their funding determinations as soon as possible within the statutory 60-day window – particularly if a given project is highly unlikely to receive SRF funding in an amount and at terms as favorable as WIFIA.

Having said that, we do not believe EPA should require WIFIA applicants to submit a separate funding application to their state's SRF program. Such a requirement would be unprecedented and unworkable, just as it would be unworkable to broadly require *any* water or wastewater infrastructure project – regardless of size, scope, or planned financing mechanism – to submit an SRF application to the state as a condition of moving forward.

While some WIFIA projects may appear on a state's Intended Use Plan (IUP), we expect many other WIFIA projects to either be ineligible for SRF assistance or much too large to have a realistic chance of receiving meaningful funding through their state's program. It should be the applicant's prerogative to choose whether or not to submit a separate application to the SRF program, and not a requirement of the WIFIA application process. Requiring all WIFIA applicants to complete an entirely separate application would increase administrative burdens on local communities, unnecessarily lengthen the application process, and potentially deter some utilities from applying to WIFIA at all. This outcome must be avoided, especially during WIFIA's critical pilot phase.

#### **Gathering Additional Stakeholder Input**

As we suggested in our June 2014 Key Issues document, we urge the EPA to form an informal stakeholder working group to address issues that arise while the EPA is creating the program and once it has start considering applications. The group should comprise a broad cross section of water infrastructure experts who will be able to convey the interests and concerns of all stakeholders involved with water infrastructure matters.

Thank you once again for working with our organizations to advance the new WIFIA pilot program. We will be happy to discuss these recommendations in more detail at your convenience.

Sincerely,

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