



MEMORANDUM

Date: Friday, April 8, 2022

To: Vinson Guthreau, Executive Director, Nevada Association of Counties (NACO)

From: Jason B. Cooper, NDEP Administrative Services Officer III

Subject: Infrastructure Investment and Jobs Act (H.R. 3684) more commonly referred to as the Bi-partisan Infrastructure Law (BIL) and proposed program changes

This memorandum is to help inform you on how the Infrastructure Investment and Jobs Act that is commonly referred to as the Bi-partisan Infrastructure Law (BIL) impacts Nevada for water, wastewater, and stormwater infrastructure projects. \$50 Billion of the money approved in the BIL for water projects is flowing through state SRF programs. This means Nevada is qualified to apply to EPA for approximately \$420 million in federal grants over the next five years that is specifically for addressing water projects. **OFA must demonstrate a need for these funds to apply for the EPA grants or the funds will be allocated to other states.** The state's priority lists help OFA demonstrate this need to EPA to apply for the grants. OFA will need to award projects for these funds to demonstrate future grants are needed.

Purpose and intent:

The purpose and intent of the BIL is to create jobs, repair aging infrastructure, assist with climate resiliency, support our disadvantaged or underserved communities, and stimulate the economy. Funding within this bill will help us fund:

- Additional technical assistance support to both drinking water systems and clean water systems through increased staff and/or subgrant awards to third-party vendors.
- Support to administer the additional grants, along with the reporting and oversight that is required by our grant conditions.
- Cash resources to help Nevada's water, wastewater, and stormwater systems, including those systems defined as disadvantaged or underserved, and complete needed projects. This will then generate jobs through consultants, contractors, suppliers, etc.

Timeline:

Funding is authorized and appropriated from Congress in this legislation beginning with federal fiscal year 2022 (October 1, 2021 to September 30, 2022). These stimulus funds will be allocated across five federal fiscal years. Each federal grant is expected to be open for four years. Funding from the first years' grants is expected to reach Nevada by September 2023. This means Nevada can expect a

stimulus of funds from September 2023 to June 30, 2032, or ten years from today. The amount of money in this stimulus bill will permanently increase demand for projects and requirements for oversight by our office. This will ultimately create a potentially permanent impact to our need for additional resources to administer the programs and to guide consultants that support NDEP's mission of providing safe drinking water for all Nevadans.

Clean Water State Revolving Fund (CWSRF)

- Eligible Recipients
 - Public Municipalities that have jurisdiction over disposal of sewage, industrial wastes or other wastes of any size system or community
 - Interstate agencies
 - Native American Tribes
- Eligible Projects
 - Wastewater Treatment
 - Storm water management
 - **Emerging Contaminants**
 - Habitat Restoration & Protection
 - Re-forestation
 - Landfills
 - Agriculture Management
 - Groundwater protection
 - Surface Water protection
 - Storm Water Management
 - Conservation (energy / water)
 - Consolidation
 - Refinancing expensive debt
 - Planning and design
- Normal annual appropriation (should enough projects exist to apply to EPA for funding)
 - Congress has approved the federal fiscal year 2022 appropriation. Amounts are expected to remain flat for the next four years.
 - Nevada's anticipated EPA grant: \$5,678,670
- Funding in the BIL is in addition to the normal annual appropriations.
 - BIL infrastructure grant: \$8,809,000
 - BIL Emerging Contaminants grant: \$462,000
 - BIL infrastructure grant amounts increase each year over five years
 - BIL Emerging Contaminants grant jumps up after year one and remains flat for four years thereafter.
 - Total annual funding for next five years is 2.2 to 3.2 times the normal appropriation.
- CWSRF Funding capacity:
 - Anticipated EPA grants over five years: \$88.7 million
 - Current idle cash in the program for loans: \$79 million
 - CWSRF is able to forecast cash needs for projects three to five years in the future.
- Principal Forgiveness (PF) loans (no repayment loans):
 - The EPA grants come with special requirements for additional subsidy in the form of principal forgiveness loans. The EPA grant would require these funds to be distributed to systems that meets the state's affordability criteria, which includes the following:

- Systems with a residential median household income (MHI) less than 80% of the states MHI.
- Systems that are consolidating into another system for capacity issues.
- Factors that can qualify a system as unaffordable include unemployment rate, population trends, project affordability, and project characteristics.
- Here are the 2022 EPA grant values:
 - BIL infrastructure grant: Mandates 49% \$4,316,410
 - BIL Emerging Contaminants grant: Mandates 100% \$462,000
 - Normal annual appropriation grant: Mandates 20% \$1,135,734
 - Total principal forgiveness \$5,914,144

Drinking Water State Revolving Fund (DWSRF)

- Eligible Recipients
 - Community Water Systems of any size that are publicly or privately owned
 - Noncommunity Water Systems of any size that are publicly owned or are federally tax exempt.
 - Native American Tribes
- Eligible Projects
 - Drinking Water Treatment
 - Transmission
 - Distribution
 - Purple pipe distribution included
 - **Lead service line replacement**
 - **Emerging Contaminants**
 - Storage
 - Source
 - Closing abandoned wells
 - Alternative supply
 - Riverbank filtration
 - Security
 - Meters
 - Backup power / redundancy
 - Consolidation
 - Refinancing expensive debt
 - Planning and design
- Normal annual appropriations
 - Congress has approved the federal fiscal year 2022 appropriation. Amounts are expected to remain flat for the next five years.
 - Nevada’s anticipated amount: \$8,288,800
- Funding in the BIL is in addition to the normal annual appropriations.
 - BIL infrastructure grant: \$80,813,000
 - BIL Emerging Contaminants grant: \$8,740,000
 - BIL Lead Service Line Replacement grant: \$32,777,000
 - BIL infrastructure grant amounts increase each year over five years
 - Total annual funding for next five years: 3.5 to 4 times the normal appropriation.
- Funding in the BIL bill also includes a grant specific to lead service lines.

- If a contracted service provider can assist in identification of lead service lines in Nevada, or a community identifies lead service lines, we will have approximately **\$32.7 million each year** to address these issues. The entire service line (public and privately owned) must be replaced. Funding is also able to replace curb, gutters, sidewalks, streets, and landscaping.
- DWSRF Funding capacity:
 - Anticipated EPA grants over five years: \$331.5 million
 - Current idle cash in the program for loans: \$87.5 million
 - DWSRF is able to forecast cash needs for projects three to five years in the future.
- Principal Forgiveness loans
 - The EPA grants come with special requirements for additional subsidy in the form of principal forgiveness loans. The grant would require these funds to be distributed to systems that meet the state’s definition of a disadvantaged community. Here are the 2022 grant values:

▪ BIL Infrastructure grant:	Mandates 49%	\$10,198,370
▪ BIL Emerging Contaminants grant:	Mandates 100%	\$8,740,000
▪ BIL Lead Service Line grant:	Mandates 49%	\$16,060,730
▪ Normal annual appropriation grant	Mandates 26%	<u>\$2,155,088</u>
• Total principal forgiveness		\$37,154,188

Proposed Programmatic Changes

Due to this unprecedented amount of funding Nevada is able to receive, OFA is evaluating many laws and policies to help remove barriers to funding. Here is a quick summary of the items we are proposing:

- The CWSRF can fund a variety of projects but only to entities that are defined as municipalities, interstate agencies, or tribes. This prevents other publicly owned or non-profits from obtaining funding, even if they are constructing an eligible project. A bill draft request is being proposed to address this for the next Nevada Legislature.
- The DWSRF regulations have not been updated since federal changes have occurred. Additionally, the program demonstrates obstacles to funding and sustainability. OFA conducted a public listening session on February 23, 2022. The listening session was recorded and posted on our website (<https://ndep.nv.gov/water/financing-infrastructure>)
Items being considered for change include:
 - Expanding the definition of “disadvantaged community” and making the process easier to update as changes occur at the federal level.
 - Expanding loan terms from 20 years to 30 years for eligible recipients and up to 40 years for disadvantaged systems.
 - Adding a service fee to loans issued through the DWSRF.
 - Updating the environmental review process to conform with federal guidelines.
 - General updates to conform with other sections of state regulations and federal changes.
- Updates to the Debt Management Policy for loans.
 - Proposed updates to the Debt Management Policy that is governed by the State Board of Finance will be heard in May. Changes include reducing the interest rate charged on loans and allowing more flexibility in loan terms, reserve account

- requirements and lien positions should an eligible borrower be able to demonstrate to the satisfaction of the State Treasurer they have sufficient financial capacity to repay their debt and sustain their system in perpetuity.
- Updates to the CWSRF Intended Use Plan's affordability criteria
 - This evaluation is to mirror the DWSRF disadvantaged program and definition. The CWSRF is able to outline the federal requirement for PF funding in the annual intended use plan. OFA will begin this process expeditiously.



Drinking Water and Clean Water Priority List Talking Points

- Through the Bipartisan Infrastructure Law (BIL), the Nevada Division of Environmental Protection, Office of Financial Assistance (OFA), may be eligible to apply for over \$400 million in additional funding over a 5-year period.
- These funds will supplement Nevada's base allocation of funding for the Clean Water and Drinking Water State Revolving Funds.
- The BIL authorizes additional funding for infrastructure (construction - new, repair/ replacement/ rehabilitation), as well as specific funding for Emerging Contaminants for both Drinking Water and Clean Water, also funding for Lead Service Lines (LSL's) through the Drinking Water Program. There will also be additional funds available for Technical Assistance in both program areas.
- To obtain these additional funds, the OFA must be able to document there is a need in the State of Nevada. This is documented by having projects on the Priority Lists.
- Entities are encouraged to get their potential projects on the Priority List(s). The easiest way to do this is by using the Nevada Infrastructure Financial System (NIFS) to submit pre-applications. <https://ndepifs.ndep.nv.gov>
- The contact sheet can be used to obtain basic applicant/system information and includes broad questions to help evaluate system needs.
- Clean Water and Drinking Water eligibility handouts are included. **These are not all inclusive.** They're intended for discussion and to raise awareness about the types of projects that may be eligible for funding. It may help to identify construction projects, compliance issues, emerging contaminants, lead issues, or a need for technical assistance - all areas that will be receiving additional funding through the Bipartisan Infrastructure Law.

For assistance please contact:

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SRF - System/Organization Contact Information – This doesn't serve as a Pre-Application for the Priority List. Go to <https://ndepifs.ndep.nv.gov> to start your pre-application

System/Organization Name: _____

Office Phone Number: _____

Mailing Address: _____ County: _____

City, State, Zip: _____

Physical Address if different than mailing: _____

City, State, Zip: _____

Primary Contact Person: _____ Title: _____

Email: _____ Phone Number: _____ office
Phone Number: _____ cell

Authorized Representative: _____ Title: _____

Email: _____ Phone Number: _____ office
Phone Number: _____ cell

Is System/Organization Public Private Non-Profit

Project Type: Water Wastewater Stormwater Landfill

Is there a need for Preliminary Engineering Report and/or Environmental Assessment? Yes No

Anticipated Cost: _____

Any Technical Assistance needs? (Rate study, training, system maps, manuals & plans, operator certification?) Please describe _____

System security (physical/cyber?) Describe needs (fencing, cameras, etc.) _____

Condition/age of electrical and/or SCADA _____

Any asbestos-concrete pipes? Estimate of lineal feet _____

Any DW pipes constructed with poured lead joints or any other lead issues? Estimate of lineal feet/describe other lead issue _____

Any undersized DW pipelines (less than 6 inches that can't serve fire hydrants)? Estimate of lineal feet _____

Any DW or sewer pipe made of materials that don't meet current standards? Estimate of lineal feet _____

Any emerging contaminants for either CW or DW? Describe _____

Does system have/need redundancy? (source/storage/power) _____

Is there a "Green" component to project (energy efficiency, renewables, conservation)? _____

Anticipated Total Cost of Project: _____

Clean Water SRF Eligibility

- **Municipalities:** City, town, county, district, association, or other public body created by or pursuant to the law of this State and having jurisdiction over disposal of sewage, industrial wastes or other wastes; or an Indian tribe or an authorized Indian tribal organization (NRS 445A.375).
- **Interstate agencies:** Agreement or compact approved by the Congress of the United States; or having substantial powers or duties pertaining to the control of pollution of waters. (NRS 445A.370).

Clean Water SRF Project Categories

General – Eligible Uses of Funds

- Construction Activities
- Activities Related to Plan, Develop and Obtain Financing for Projects
- Technical Assistance

Following are brief examples of eligible uses of Clean Water funds – not all inclusive!

Planning/Assessment

Planning activities that have a reasonable prospect of resulting in a capital project are eligible. The CWSRF can fund the water quality portion of planning/assessment activities on a pro rata basis.

Asset Management/fiscal sustainability plans – Rate Studies – Cost and effectiveness analyses – Compliance issues – Capital improvement plans – Facility plans – Treatment works security/safety plans – Environmental management systems – Planning activities that assess a treatment works vulnerability to extreme weather and climate change

Centralized Wastewater Treatment

Headworks – Screening systems – Grit chambers
Clarifiers – Biological treatment systems
Biosolids dewatering and residuals handling equipment
Nutrient removal processes – Filtration systems – Disinfection processes – Collections lines – Pump Stations – Force Mains

Climate Resilience - Treatment Works

Levies/dykes/berms – relocation of assets above flood stage
Backup generators – Fuel transport – Storage tanks – Portable pumps – Physical hardening of electrical systems/equipment

Energy Efficiency

Lighting – HVAC – Process equipment – Electronic systems

Renewable Energy

Wind/solar – Methane capture and energy conversion equipment
– Biosolids drying/dewatering and energy conversion equipment
– Co-digestion – Combined heat and power

Water Conservation – Contact NDEP for Eligible Entities

Projects that reduce the demand for Treatment Works capacity through reduced consumption (i.e., water efficiency)
Water Meters – Plumbing fixture retrofit or replacement – Water efficient appliances – Education programs – incentive programs

Water Reuse & Precipitation Harvesting

Collection and treatment systems – Distribution lines to support water reuse – Transmission lines, injection wells – Equipment to use reclaimed water – Direct potable reuse

Stormwater – Contact NDEP for Eligible Entities

Eligible stormwater projects include gray and green infrastructure. Projects must have a water quality benefit.
Contact NDEP for Eligible entities.

Gray Infrastructure

Traditional pipe, storage, and treatment
Sediment controls including - Filter fence – Storm drain inlet protection – Street sweepers – Vacuum trucks

Green Infrastructure

Green roofs, streets, and walls – Rainwater harvesting – Infiltration basins – Constructed wetlands – Permeable pavement

Agricultural Best Management – Contact NDEP for Eligible Entities

Eligible Ag BMP's address runoff and erosion from ag cropland and animal feeding operations.

Decentralized Wastewater Treatment– Contact NDEP for Eligible Entities

Upgrade, repair, or replacement of existing systems (i.e., septic systems, cluster systems, lagoons) – Construction/installation of new systems, permitting fees, legal fees; Septage treatment works and pumper trucks to support maintenance

Resource Extraction – Contact NDEP for Eligible Entities

Resource extraction includes mining, quarrying, hydraulic fracturing, and oil/gas operations. Eligible water quality projects that remediate or prevent contamination from these sites, include projects to treat drainage and wastewater, prevent aquifer contamination, excavate, and remediate contaminated soil, remove contamination from water or soil that is not part of the site or prevent runoff.

Contaminated Sites – Contact NDEP for Eligible Entities

Contaminated sites include brownfields, Superfund sites and sites of current or former aboveground or underground storage tanks.

Landfills – Contact NDEP for Eligible Entities

Eligible landfill projects include landfill closures and landfill leachate collection and treatment.

Habitat Protection and Restoration – Contact NDEP for Eligible Entities

Eligible projects include shoreline activities, instream activities, and capital costs associated with the control of invasive vegetative and aquatic species.

Silviculture – Contact NDEP for Eligible Entities

Silviculture includes forestry activities such as removal of streamside vegetation, road construction and use, timber thinning and harvesting, and site preparation for the planting of trees. Eligible water quality projects that remediate or prevent pollution from silviculture include project that control erosion from access roads, maintain stability of stream banks, ensure revegetation, control introduction of pesticides and fertilizers into waterways.

Desalination – Contact NDEP for Eligible Entities

Projects are eligible when then there is a water quality benefit. Projects include treatment and disposal of brine, desalination of brackish water to augment water supply, and treatment/reinfection of brackish groundwater.

Groundwater Protection and Restoration – Contact NDEP for Eligible Entities

Projects include those that protect and restore aquifers. This includes pump and treat projects, aquifer recharge projects, and projects that decrease aquifer withdrawals through rainwater harvesting, water conservation, or water reuse. Other projects that project groundwater include leachate control and septic system replacement.

Surface Water Protection and Restoration – Contact NDEP for Eligible Entities

In addition to eligible uses mentioned previously, projects include land and water rights acquisition to protect water quality and activities that reduce atmospheric deposition of pollutants.

Emerging Contaminates/Reducing PFAS Exposure

Reduce people's exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through their drinking water and to help address discharges through wastewater and, potentially, nonpoint sources.

Drinking Water SRF Eligibility

Existing privately and publicly owned water systems

- Publicly-owned community water systems
- Privately-owned community water systems
- Non-profit non-community water systems (such as a school, could be gov't owned)

New Community Water Systems

That represent cost-effective solutions to existing public health problems with serious risks caused by

- Unsafe drinking water provided by individual wells or surface water sources – scope limited to specific geographic area affected
- Technical, managerial, and financial difficulties that consolidation into a new regional community water system can address - scope limited to the systems involved

Drinking Water SRF Project Categories

General – Eligible Uses of Funds

- Construction Activities
- Activities Related to Plan, Develop and Obtain Financing for Projects
- Technical Assistance

Following are brief examples of eligible uses of Drinking Water funds – not all inclusive!

Sustainability/Planning/Technical Assistance

Effective utility management practices – Capital improvement and replacement plans – Front end project planning – Rate evaluations and project development – Resiliency Planning

Treatment

New facilities or portions of facilities, including – Mixers, flocculation, sedimentation – Filtration – Chemical systems and equipment – Disinfection – Filter backwash recycling – Residuals handling

Upgrades, rehabilitation or replacement of facilities or portions of facilities – Potable Reuse – Desalination plants – Raw water storage

Transmission and Distribution

Transmission mains – Distribution mains – Meters – Appurtenances (valves, hydrants, pipe restraints) – Pump stations – Service line replacement (up to premise plumbing) – Water main extensions to serve residents not served by a safe supply of potable water (up to premise plumbing) – Reclaimed wastewater effluent and water reuse infrastructure and distribution systems

(aka “purple pipe”) that helps mitigate the need for additional potable supply

Source

- Development of new source(s) to replace a contaminated drinking water source or to increase drought resilience
- Raw water intakes, wells or other infrastructure that allows for movement of raw water into the treatment plant or distribution system (interconnections – surface water intakes – ground water wells)
- Aquifer storage and recovery for water storage including wells – pumps – pipes – wellhead structures

Storage

New storage or replacement/rehabilitation of existing structures to continue to maintain compliance and protect public health by:

- Preventing microbiological contaminants from entering a public water system
- Equalizing water demands
- Reducing pressure fluctuations in the distribution system
- Providing reserves when power outages and other emergencies occur
- Providing drought resiliency

Consolidation

- Purchase of a water system and all its assets
- Interconnection of systems to resolve SDWA noncompliance – Achieve technical, managerial, and financial capacity – Reduce overall per household cost of service – Drought resiliency

Creation of New Systems

- To create a community water system to address existing public health problems caused by unsafe drinking water provided by individual wells or surface water sources (limited in scope to the specific geographic area affected by contamination)
- Projects that create a new regional community water system to eliminate individual systems with technical, managerial, and financial difficulties.

Water Security

Fencing and gates – Lighting – Cameras – Closed circuit television

Energy Efficiency

- Energy efficient retrofits, upgrades or new pumping systems and treatment processes
- Pump refurbishment to optimize pump efficiency
- Pipe project that prevents water loss
- Renewable energy (part of a public health project) – such as wind, solar, geothermal, and micro-hydroelectric that provide power to a utility

- Energy management planning – energy assessments, energy audits and optimization studies

Other Capital Projects

- Purchase of spare parts in conjunction with an initial capital project
- Large capital equipment purchases such as SCADA – Leak detection equipment – Generators – Database infrastructure or software (asset management systems, inventory tracking software)
- Administration buildings for the water system (billing offices, laboratories, control centers, engineering departments,
- Decommissioning/deconstructing old facilities
- Acquisition of existing infrastructure
- Other activities eligible could include planning and design, water utility audits, leak detection studies, identification of service line laterals

Lead Service Lines

- Complete removal of lead services lines (LSL) (publicly and privately owned portions) or services lines made of galvanized iron or galvanized steel
- Removal of lead goosenecks, pigtails, and connectors
- Replacement of curb stops, curb stop boxes and other service line appurtenances
- Site restoration, including landscaping, sidewalks, driveways, etc., if removal was necessary to replace LSL's
- Temporary pitcher filters or point-of-use (POU) devices
- Development/updating of LSL inventories, including locating and mapping LSL's
- Planning and design for examples listed above
- Non-routine lead sampling as part of a LSL replacement project

Emerging Contaminants

- Costs associated with construction of a new treatment facility or upgrade to an existing treatment facility addresses emerging contaminants
- Development of a new source
- Consolidation with another water system
- Costs for planning and design
- Infrastructure related to pilot testing for treatment alternatives
- Creation of a new community water system