September 23, 2022

Submitted via email: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board (SWRCB)  
1001 I Street, 24th Floor  
Sacramento, CA 95814

SUBJECT: COMMENT LETTER—October 3, 2022 BOARD MEETING—CWSRF IUP

Dear Ms. Townsend,

The California Association of Sanitation Agencies (CASA) and WateReuse California (WRCA) appreciate the opportunity to provide comments on the draft 2022-23 Intended Use Plan (IUP) for the Clean Water State Revolving Fund (CWSRF). CASA represents more than 130 public agencies and municipalities that engage in wastewater collection, treatment, recycling, and resource recovery. The mission of WateReuse California is to promote responsible stewardship of California’s water resources by maximizing the safe, practical, and beneficial use of recycled water. Both of our organizations’ member agencies are engaged in advancing recycled water production and beneficial reuse, committed to developing renewable energy supplies, and actively maximize water reuse.

While we have specific comments on this year’s IUP, we also want to take this opportunity to highlight ongoing efforts to improve CWSRF program delivery. Our associations have been pleased to work in partnership with the SWRCB and the Office of Water Programs at the California State University Sacramento on the recently completed and published report from our multi-year program review of the CWSRF. This project evaluated program practices, procedures, policies, timelines, staffing levels, and other aspects of program implementation to identify potential efficiencies, improvements, or enhancements that would facilitate timely review, processing, and execution of loan agreements. The researchers examined the program disbursement process to make disbursement requests more efficient, gain broad stakeholder support/concurrence, and improve timeliness of payments. The review also included a benchmarking component to look at selected other states’ programs and identify transferable processes and best practices. The summary recommendations include suggestions for standardizing and streamlining process reviews, improving responsiveness of the program through enhanced engagement with applicants, and reevaluating staffing needs within DFA. We encourage you to review the full report and lists recommendations, and implement them to the extent possible.

While we are optimistic about prospective enhancements for administering the CWSRF program through implementing the recommendations in the report and greater coordination via stakeholder advisory meetings, we have several concerns regarding the 2022-23 IUP, specifically in regard to the funding capacity, the federal capitalization grant amounts, and the staff recommendation for no new projects to be placed on the fundable list this year. Since WRCA’s and CASA’s members have an interest in the success, utilization, and accessibility of the CWSRF, we request the SWRCB update the draft 22-23 IUP by making the following changes:

1. Adjust the Cut-Off Score in the 2022-23 IUP to 13 (Scenario D) to ensure high-scoring applicants who expended significant resources and went to great lengths to plan and apply this year will be placed on the fundable list and have the assurance of funding when the SWRCB’s program and funding capacity allow.

2a. Adjust the lending capacity projection within the draft IUP upward based on more robust projections of capacity from the fall 2022 leveraging (bond issuance), reducing the number of open grants (prepayments), and accessing capitalization grants as old as 2018, (per data in NIMS) by providing a source of match;
2b. Accelerate the origination of financial assistance by relying on a bond counsel and outside advisors to expedite financial and legal due diligence.

3a. Enable CASA, WRCA, and our members to assist the SWRCB to address long-term lending capacity issues through a focused workgroup including public finance professionals;

3b. Revise the project funding capacity to reflect the $400 million we secured in AB 180 for state appropriations to match federal capitalization grants, and coordinate further with stakeholders to bolster leveraging opportunities.

4. Provide criteria or examples that may be referenced when the Deputy Director is evaluating whether to move a stalled project onto the following years fundable list, and document or report on the projects with such determinations in an Appendix of the next IUP after the use of this authority.

5. Include a statement in Appendix I (Emerging Contaminant (EC)/PFAS Intended Use Plan) that indicates that transferring Clean Water Act EC/PFAS funding to the Drinking Water EC/PFAS does not indicate a decision to continue that practice in the future, and additionally, a statement should be added that the State Water Board will develop a list of eligible activities and project types and work with stakeholders to assess funding needs.

Comment #1: Support Scenario D to Fund Essential and Innovative Projects

Numerous utilities expended years of staff and board resources to self-score, plan, and apply to this year’s fundable list. However, the draft IUP recommends funding no new projects, despite it being a banner year for state and federal funding. This seemingly is due to rollover projects in the multi-year approved project backlog receiving these new resources, as evident in “Table 5: Cut-off Scoring Scenarios.” In prior years, State Water board staff had indicated to stakeholders that future funds were not going to be encumbered by approvals in a given year, as the IUPs for those years did not include rollover projects when determining whether the proposed cutoff score would fall within the funding target range.

Notably, the table in the 2022-23 IUP differed markedly from prior years’ IUPs in that it included the backlog amount that is being funded as part of the estimated CWSRF Repayable financing. This is a significant shift in the approach and policy for utilizing the Funding Target to determine the cutoff score, and dramatic departure from applicant expectations. We respectfully request an explanation for this shift, and encourage the Water Board not to implement such a change this year so that applicants will be able to operate with an understanding of how these new metrics will impact the evaluation and viability of their applications. A modified table mirroring prior years format of not including the rollover projects is below which shows the actual 2022-23 IUP funding scenarios which are proposed in the draft.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Cutoff Score</th>
<th>New Fundable Projects</th>
<th>Estimated Total CWSRF Repayable Financing, M</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>15</td>
<td>3</td>
<td>$61</td>
<td>Estimated Total Repayable Financing is less than the Funding Target Range of $540 to $750 million.</td>
</tr>
<tr>
<td>C</td>
<td>14</td>
<td>5</td>
<td>$264</td>
<td>Estimated Total Repayable Financing is less than the Funding Target Range of $540 to $750 million.</td>
</tr>
<tr>
<td>D</td>
<td>13</td>
<td>15</td>
<td>$862</td>
<td>Estimated Total Repayable Financing is above the Target Range of $540 to $750 million.</td>
</tr>
</tbody>
</table>

As you can see in the above format, Scenario D which sets a Cut-Off Score of 13 would provide funding commitments to the highest number of projects, even if it results in a small number of projects being placed in a backlog due to exceeding the funding target range. As presented in the IUP however, none of these are recommended. This appears to be the result of a transition from the approach in previous years, which was to only consider scored projects that are within the funding target range of that year on the fundable list for capacity purposes, to a new approach where the determination of whether to approve new projects includes the total historical projects on the fundable list combined with the newly scored projects when determining whether the Board is within the funding target range.
While we understand the stated concerns with cash flow and the IUP’s ability to draw on certain funds, from our perspective, this moving of the goalposts is unfair to those agencies that have put in the time, effort, and resources into the 2022-23 and 2023-24 application cycles to develop quality applications that receive high scores to go unfunded. Rather, we would suggest if the SWRCB is intent on not actually funding any new projects this year, at a minimum the IUP should proceed to add the projects to the fundable list, and could roll the actual distributions over to a subsequent year, as needed. This is preferable to the current staff recommendation of adding no new projects to the fundable list, thereby forcing applicants to start over and apply again in a different year.

Such an alternative course seems feasible, as the current recommended number of projects is less than the long-term average. The IUP’s explanation for the current recommendation provides, “Although funding only 24 loan projects in a year is less than the long-term average, the State Water Board finds that taking a measured approach to establishing a Cut-Off Score for SFY 2022-23 is appropriate.” Moreover, Appendix A exhibits a year-end balance of $977m in 2022-23 after $850m in disbursements, along with a year-end balance of $436m in 2023-24 after another $850m in disbursements. This seems well within an appropriate range of fund balance to at least approve new projects, even if program capacity necessitates deferral.

Further in support of this point, the addition of the self-scoring tool a few years ago was intended to provide applicants with certainty about funding, as they were going through the application process. Since 2018, cutoff scores have ranged between 12 and 13, so applicants with a score of 13 in Scenario D anticipated being added to the fundable list. Instead, the release of the IUP was delayed four months to late August 2022, and no indication was provided that there was going to be a new approach and plan for this year. Thus by allowing applicants to go through a self-scoring process that results in no one getting funded in a given year, it undermines the element of certainty traditionally associated with securing these loans, and makes it especially hard for agencies to see the value in pursuing CWSRF funding in the future. Thus, it would be far more appropriate for the public agencies who have sought funding this year (or about to apply by the November deadline), and whose projects have scored very well, to have the assurance they will receive funding in the future as capacity allows. We request the Board adopt Scenario D while also delaying the recommendation of “no new projects” until the 2023-24 IUP or 2024-25 IUP to allow agencies to plan accordingly for this shift.

**Recommendation:**
- Adopt “Funding Scenario D” to ensure those 15 projects that received a score of 13 and above will be included on the fundable list in subsequent years;
- Defer the IUP recommendation for funding no new projects until the 2023-24 IUP or 2024-25 IUP, if necessary, so stakeholders will better understand their likelihood of being placed on the fundable and not use their limited resources to apply for funding that is encumbered by past projects.

**Comment #2: The Reduced Annual Sustainable Financing Capacity Remains a Concern and California Should Pursue Outside Financial Professionals and Advisors to Accelerate Origination**

The annual sustainable financing capacity of the CWSRF is an important matter for our members, and over the last several years, CASA and WRCA have commented on the need to enhance transparency and communication about CWSRF capacity projections. With the recent draft FY 2022-23 IUP, it appears we have taken a step backwards with more concern and additional confusion about financing capacity and its impact on: (1) projects awarded but awaiting funds, (2) new projects with essential needs not being placed on the fundable list, and (3) communities planning for future funding cycles.

For context, the FY 2020-21 IUP significantly modified and reduced the annual sustainable financing capacity from over $1 billion dollars per year down to $586 million dollars. To help respond to stakeholders’ concerns about transparency in the funding capability analysis and clarity regarding the assumptions and estimates that were used in the financial model, SWRCB staff convened two sessions with the SWRCB’s financial advisor in which the model was reviewed in detail. At those meetings, the financial advisors explained the factors that influence the long-term capacity, and how adjustments or changes to those elements would change the calculation. These discussions were very helpful in increasing our
E. Joaquin Esquivel, Chair
September 23, 2022
Page 4 of 7

understanding of changes for which we might advocate in order to bring the capacity closer to the $1 billion that was used in past IUPs. One example that appeared feasible to stakeholders was obtaining an appropriated unburdened state match, which would increase the sustainable funding capacity by about 18 percent. In fact, this year CASA sought and secured $400 million for the SRF programs, and we would like for a significant portion of that funding to be allocated to the CWSRF and reflected in the financial capability analysis. It does not seem as though a determination has been made on this point, and we note in Appendix A that Footnote 38 observes, “the Deputy Director of DFA is authorized to determine the appropriate allocation of the additional funds appropriated by AB 180 between the CWSRF and DWSRF,” so we respectfully request for the CWSRF to receive an appropriate portion of this source of funding.

In addition, we are encouraged that SWRCB intends to issue additional bonds in support of the Clean Water SRF in the fall of 2022, and that significant increased funding will be available over the next five years through the Bipartisan Infrastructure Law. Unfortunately, we are concerned that the lending and capacity projections do not reflect this large influx of funds available. In a time where state and federal funds are abundant and forthcoming, and there is consistent demand for CWSRF funds, it seems counterintuitive that funding capacity has been nearly cut in half and the IUP is proposing funding no new projects at all this year. If program capacity (as opposed to funding capacity) is more of the limiting factor, given the volume of projects on the program’s docket, we encourage and recommend that the SWRCB seek assistance and support from financial professionals, bond counsel, and outside advisors to perform and expedite financial and legal due diligence, in order to accelerate origination.

**Recommendation:**

- Adjust the CWSRF lending capacity projection within the draft IUP to incorporate more robust projections of capacity from the fall 2022 bond sale, impending influx of significant federal funds, reducing the number of open grants, and accessing state match for cap grants;
- Accelerate the origination of financial assistance by relying on bond counsel and/or outside advisors to expedite financial and legal processes.

**Comment #3: California Needs to Make the Most of Available Dollars Through Greater Leveraging**

CASA’s and WRCA’s members rely on California’s CWSRF to finance essential infrastructure at a reasonable cost to rate payers. While the CWSRF loan rate and forgivable principal subsidies are attractive in the context of affordability, it is equally important that communities have predictable access to funding. As we have seen over the last several IUP cycles, projecting SRF lending and leveraging capacity is increasingly essential and has dramatic impacts on CWSRF originations and commencing construction, particularly for communities that have been anticipating funding over multiple IUP cycles.

Accordingly, we remain concerned that California is not sufficiently leveraging its available funding. California’s leveraging ratio is in the range of $1.65 of financial assistance distributed for every $1.00 of federal grant money coming in. Other states, including New York, Ohio, Iowa and Indiana have leveraging ratios of over $2.00. In all of CASA’s and WRCA’s communications regarding the CWSRF over the past several years, our associations have advocated for greater leveraging above the roughly $1B level that was previously established, yet the opposite occurred, and the amount was cut nearly in half. We again commits to working with the SWRCB to make the most of the capital available within the bounds of fiscal prudence and rating agency criteria and expectations.

**Recommendation:**

- Enable CASA, WRCA, and our members to assist the SWRCB in addressing long-term lending capacity issues through a focused workgroup including communities and public finance professionals;
- Revise the project funding capacity to reflect the $400 million we secured in AB 180 for state appropriations to match federal capitalization grants, and coordinate further with stakeholders to bolster leveraging opportunities;
- Address issues with the source of state match and the reduction of loan interest; and
- Utilize opportunities to increase leveraging so that we may restore fund capacity to prior levels.
Comment #4: The IUP Provides New Authority to the Deputy Director Which Should be Modified So As To Provide Applicants with Safeguards from Adverse Deferrals of Projects when Negotiating Terms of Agreements

We recognize the proposed IUP allows for the Deputy Director to elevate projects in Scenarios B, C, and D, if certain circumstances transpire such that program and funding capacity are available. However, we also note that there is a new authority in this year’s IUP which would allow the Deputy Director to take a project out of the queue. While we understand that such a tool might be useful in clearing projects out of the fundable queue and potentially expediting other project approval, we respectfully request this provision be modified to ensure no adverse unintended consequence proceed from it. Specifically, the IUP states:

“As part of making this determination, the Deputy Director may choose to bypass and not fund any rollover project on the Fundable List if:

- The rollover applicant has not consented to the loan provisions through legal consultation by 10/31/22.
- The applicant has not provided by 10/31/22, all documents or information requested by the Division of Financial Assistance to execute a CWSRF loan.
- Litigation, outstanding water rights change petition, or other circumstances appear to make it infeasible for a rollover project to have an executed agreement before 6/30/23.” (p. 40 – 41)

While we support and understand how this new provision may function to enhance staff’s efficiency in maximizing the number of projects for which agreements are reached by June of 2023, we want to ensure that it does not have the unintended effect of providing a means to force an applicant to compromise in seeking different legal terms or loan conditions than those offered by the SWRCB, particularly when trying to negotiate and finalize an agreement, or risk otherwise losing their place on the fundable list that cycle.

To ensure the transparent use of these provisions, we respectfully request for the IUP to include some manner of checks and balances for the use of this tool. We are open to discussion and considering options on how the Board may provide such assurances. One possibility could be providing criteria or examples for when it may be utilized. Another could be to include in the IUP each year a section or an Appendix reporting out on projects that were removed under this new authority and the general reasoning behind the removal. For example, we know several projects on the list are no longer seeking funding and may not respond to outreach from the SWRCB. In such an instance, we would understand why it would be good to move them to another year, while documenting the unresponsiveness of the applicant. Likewise, we would think it could be appropriate to use this authority if an applicant and the SWRCB have agreed to a schedule, but the applicant routinely missed deadlines delaying the SWRCB’s work. However, if the applicant is diligent in submitting required documents but the parties simply cannot agree to terms, we would not support the use of this new authority to drive reaching an agreement or to circumvent ongoing negotiations.

Recommendation:

- Provide criteria or examples in the IUP for when this authority may be used
- Include an Appendix in the next year’s IUP of the projects that are bumped and the reason for the decision.

Comment #5: The Transfer of Clean Water EC/PFAS Funding to the Drinking Water EC/PFAS Program Should Annually Be Considered, and DFA Should Work with Stakeholders to Assess Funding Needs Related to PFAS, After Identifying Eligible Activities and Projects

We note that in Appendix 1 the SWRCB proposes to transfer Clean Water EC/PFAS funding to the Drinking Water EC/PFAS program. Based on current conditions and identifications of need, we do not oppose this transfer; however, we request that this be re-examined in subsequent years for Clean Water EC/PFAS funding under the Infrastructure Investment and Jobs Act. We recommend that the SWRCB identify what activities and projects would be eligible and conduct an annual assessment of CWSRF demand. CASA and WateReuse CA would be pleased to partner on this assessment.

Recommendation:

- SWRCB should annually determine the demand for funding for PFAS related projects under the CWSRF.
- Enable CASA, WRCA, and our members to work with DFA on this assessment.
Conclusion
CASA and WateReuse CA appreciate your consideration of these remarks. With the ongoing drought and opportunities for water recycling projects to help augment supply, we look forward to working with the SWRCB to improve and enhance the 2022-23 IUP to ensure our members’ projects will be realized in the years ahead as the Board’s program and funding capacity allow. We value our partnership with the SWRCB and share the goal of ensuring the CWSRF is predictable, robust, effective, and ambitious in funding essential infrastructure for years to come. If you have questions about these comments, please contact us at jwest@watereuse.org and jvoskuhl@casaweb.org.

Sincerely,

Jennifer West
Managing Director
WateReuse California

Jared Voskuhl
Manager of Regulatory Affairs
California Association of Sanitation Agencies

Attachment 1: CWSRF Project Videos and Information for Applicants with a Total Priority Score between 13 and 15

cc:
Members, SWRCB
Joe Karkoski (Joe.Karkoski@waterboards.ca.gov)
Christopher Stevens (Christopher.Stevens@waterboards.ca.gov)
Anne Hartridge (Anne.Hartridge@waterboards.ca.gov)
## Attachment 1: CWSRF Project Videos and Information for Applicants with a Total Priority Score between 13 and 15

<table>
<thead>
<tr>
<th>Agency</th>
<th>Project Name</th>
<th>Priority Score</th>
<th>Total Project Financing Need</th>
<th>Link to Project Video</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union Sanitary District</td>
<td>Enhanced Treatment and Site Upgrade Phase 1A Project</td>
<td>13</td>
<td>$145,000,000</td>
<td><a href="https://www.unionsanitary.ca.gov/about-us/etsu">https://www.unionsanitary.ca.gov/about-us/etsu</a></td>
</tr>
<tr>
<td>City of San Buena-Ventura</td>
<td>Ventura Water Pure</td>
<td>13</td>
<td>$49,790,000</td>
<td><a href="https://www.youtube.com/watch?v=ABs-DlxRR5k">https://www.youtube.com/watch?v=ABs-DlxRR5k</a></td>
</tr>
<tr>
<td>City of La Mesa</td>
<td>Inflow and Infiltration Mitigation Project Phase 6</td>
<td>15</td>
<td>$7,000,000</td>
<td><a href="https://www.cityoflamesa.us/AgendaCenter/ViewFile/Item/5330?fileID=13418">https://www.cityoflamesa.us/AgendaCenter/ViewFile/Item/5330?fileID=13418</a></td>
</tr>
<tr>
<td>West Bay Sanitary District</td>
<td>Avy Altschul Pump Station Project</td>
<td>14</td>
<td>$500,000</td>
<td><a href="https://westbaysanitary.org/wp-content/uploads/2022/01/Avy-Altschul-Pump-Station-Project-NOE.pdf">https://westbaysanitary.org/wp-content/uploads/2022/01/Avy-Altschul-Pump-Station-Project-NOE.pdf</a></td>
</tr>
<tr>
<td>Central Basin Municipal Water District</td>
<td>Recycled Water Expansion Project in Cities of South Gate, Lynwood, and Bell Gardens</td>
<td>13</td>
<td>$19,876,193</td>
<td><a href="https://centralbasin.hosted.civiclive.com/about_us/departments/engineering_and_operations/capital_improvement_projects/gateway_cities_recycled_water_expansion">https://centralbasin.hosted.civiclive.com/about_us/departments/engineering_and_operations/capital_improvement_projects/gateway_cities_recycled_water_expansion</a></td>
</tr>
</tbody>
</table>