

State Water Infrastructure Authority
Meeting Date – February 21, 2023
Agenda Item K – FY2022-23 Priority Rating System Approval for Public Review for
Bipartisan Infrastructure Law Drinking Water State Revolving Fund
Lead Service Line Replacement Funds

Division of Water Infrastructure Staff Report

Background

Congress appropriated funds to the Drinking Water State Revolving Fund (DWSRF) in the Infrastructure Investment and Jobs Act of 2021, commonly referred to as the Bipartisan Infrastructure Law (BIL). The BIL appropriated additional funds for five fiscal years (FY 2022-FY 2026) specifically for the purpose of inventorying and replacing lead service lines. These funds are referred to as the BIL DWSRF Lead Service Line Replacement Funds (LSLR Funds).

In addition to the BIL, EPA’s Revised Lead and Copper Rule (LCRR) went into effect on December 16th, 2021. In response to public health concerns associated with lead exposure, and as a first step towards eventual lead service line replacements, all community water systems and non-transient, non-community water systems are required to complete a lead service line inventory by October 16th, 2024.

The lead service line inventory must include every service line connection within a water system’s distribution system. There are currently 2,321 public water systems in North Carolina that are subject to the LCRR’s inventory requirement. As the LCRR is currently written, water systems that have lead service lines categorized as “galvanized requiring replacement” will have to submit a service line replacement plan to the State and potentially initiate a program to replace the subject service lines. It should be noted that EPA has indicated that the service line replacement requirements may be further revised in an effort currently referred to as LCRI (Lead and Copper Rule Improvements).

The US Environmental Protection Agency (EPA) requires the Division of Water Infrastructure (Division) to submit an Intended Use Plan (IUP) for the DWSRF program. Included within each program’s IUP is the Priority Rating System, which contains the priority points that are applied by Division staff when an application for funding is evaluated. The Division proposes the Priority Rating System to the EPA each year in the IUP for each State Revolving Fund (SRF) and submits the IUPs to the EPA as part of the capitalization grant applications.

North Carolina General Statute G.S. 159G-71 contains the powers and the duties of the State Water Infrastructure Authority (Authority), which include “To establish priorities for making loans and grants consistent with federal law”.

Overview

The BIL has appropriated states additional funds for five fiscal years (FY 2022-FY 2026) specifically for the purpose of replacing lead service lines. FY 2022 and 2023 allotments are open for states to apply for the capitalization grant; however, EPA has only announced 2022 allotments. The 2022 allotment and estimated allotments for 2023-2026 are shown below.

Table 1. Allotments related to Lead Service Line Removal Funds	
Federal Fiscal Year	Potential Drinking Water SRF Lead Service Line Removal Funds
2022	\$87,062,000
2023	\$89,998,295*
2024	\$89,998,295*
2025	\$89,998,295*
2026	\$89,998,295*
Total	\$447,055,180*

*Allotments for FY 23-26 are estimates.

The Priority Rating System proposed would cover funds from FY 2022-2023, provided the Division receives sufficient project demand for the two years of allotment.

The capitalization grant allows states to “set-aside” part of the grant to support fund administration, technical assistance to communities, and other activities to support lead service line removal. DWI intends to reserve the right to utilize the maximal allowable set-asides.

The capitalization grant also requires states to provide 49 percent of the LSLR capitalization grant amount as additional subsidization in the form of principal forgiveness and/or grants. States must provide additional subsidization to water systems that meet the state’s disadvantaged community criteria. For the DWSRF program a disadvantaged community meets the affordability criteria established by the Authority and is used for all Authority funding.

Per the March 2022 EPA BIL Implementation memo, LSLR funded projects or activities must be DWSRF eligible and be a LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. All funded projects involving the replacement of a lead service line must replace the entire lead service line, not just a portion, unless a portion has already been replaced. Eligible projects and activities are limited to the following:

- Complete removal of lead service lines (public- and privately-owned portion) or service lines made of galvanized iron or galvanized steel (that are currently or have previously been downstream of lead components) and replacement with a pipe that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.

- Removal of lead or galvanized goosenecks, pigtails, and connectors, and replacement with an acceptable material that meets the requirements established under 40 CFR 143 and which complies with state and local plumbing codes and or building codes.
- Replacement of curb stops, curb stop boxes, and other service line appurtenances that are removed as part of full LSLR.
- Site restoration, including landscaping, sidewalks, driveways, etc. if the removal was necessary to replace the lead service line.
- Permit fees if the fees are normal, required, and specific to the LSLR. It is recommended that communities waive these fees.
- Temporary pitcher filters or point-of-use (POU) devices certified by an American National Standards Institute accredited certifier to reduce lead during or for a short time period after LSLR projects.
- Development or updating of lead service line inventories, including locating and mapping lead service lines. Methods of investigation to develop inventories could include visual observation, water quality sampling (non-compliance), excavation, vacuum or hydro-excavation, statistical analysis, or other emerging technologies.
- Planning and design for infrastructure projects listed above.
- Non-routine lead sampling (if not for compliance purposes) as part of a LSLR project.

To provide LSLR funds to recipients in a more timely manner and to better ensure that drinking water systems have resources to inventory and replace lead service lines to meet lead and copper rule requirements, the Division recommends that funds be awarded to eligible projects on a more frequent schedule than the Division’s typical twice-per-year funding cycle. A more frequent award schedule will be possible only if the application review and prioritization process can be streamlined to allow Division staff to prepare recommendations that have both transparent and predictable results.

To support distribution of funds, the Division’s draft IUP (to go to public review) will include funding limits per award cycle for different project types. Specifically, proposed funding caps will go to public review as shown below. The caps are proposed to be per project type per recipient each funding round. An applicant could be considered for additional funding up to the proposed limit for each project type each award cycle. This approach is intended to spread funding to applicants within a funding cycle, yet allow systems ready to proceed with additional projects to be considered for additional funding the next funding cycle.

- \$4 million for projects replacing known lead service lines
- \$2 million for projects finding and replacing lead service lines as discovered
- \$500,000 for projects to determine service line material and inventory lead service lines in areas where the service line materials are unknown

The proposed Priority Rating System considers prioritization categories approved by the Authority for other funding programs. The proposed Priority Rating System limits project purpose priority to three project types; provides project benefit priority to systems with documented lead action level exceedances; and utilizes the same affordability prioritization as is used for all the other funding programs. The Division recommends this approach to focus funds on replacing known lead service lines as the highest priority project type and providing funds to communities with the greatest financial needs. Recommended line items and priority points are showing in the following tables.

Table 2. Project Purpose Points			
Line Item #	Category 1 – Project Purpose (Points will be awarded for <u>only one</u> Project Purpose)	Claimed Yes/No	Points
1.A	Project eliminates lead service lines (100% of project is to replace known lead service lines)		25
1.B	Project establishes and implements a program to find and replace lead service lines in areas suspected to have lead lines.		15
1.C	Project inventories lead service lines (no replacement as part of project)		5
Maximum points for Category 1 – Project Purpose			25

Line item 1.B is intended for systems that have identified likely service areas with lead service lines. The project will verify if the lines are lead and if so, will replace the entire service line. Applicants can use historical record review, predictive modeling, and/or field investigation to identify areas likely to contain lead service lines.

Line item 1.C is intended for systems that do not yet intend to replace lead service lines but need to complete or refine their lead service line inventories.

Systems may apply for and receive funding for multiple applications for different project purposes up to the funding caps described above. The intent is to support systems that need to inventory and/or replace lead service lines in multiple areas of their systems at the same time.

Table 3. Project Benefits Points			
Line Item #	Category 2 – Project Benefits	Claimed Yes/No	Points
1	Project addresses/resolves Action Level Exceedance		5
Maximum points for Category 2 – Project Benefits			5

The Division recommends providing additional prioritization for projects that will address a documented action level exceedance for lead.

Table 4. System Management Points			
Line Item #	Category 3 – Reserved for future use	Claimed Yes/No	Points
Maximum points for Category 3 – System Management			NA

The Division recommends reserving Category 3 for future consideration. Category 3 is used to provide priority for system management in the Authority’s other Priority Rating Systems. The Division does not recommend any additional prioritization for this category be provided at this time.

Table 5. Affordability Points			
Line Item #	Category 4 – Affordability	Claimed Yes/No	Points
4.A	Residential Connections		
4.A.1	Less than 10,000 residential connections OR		2
4.A.2	Less than 5,000 residential connections OR		4
4.A.3	Less than 1,000 residential connections		8
4.B	Current Monthly Combined Utility Rates at 5,000 Usage		
4.B.1	Greater than \$79 OR		4
4.B.2	Greater than \$90 OR		6
4.B.3	Greater than \$107 OR		8
4.B.4	Greater than \$129		10
4.C	Local Government Unit (LGU) Indicators		
4.C.1	3 out of 5 LGU indicators worse than state benchmark OR		3
4.C.2	4 out of 5 LGU indicators worse than state benchmark OR		5
4.C.3	5 out of 5 LGU indicators worse than state benchmark		7
4.D	Project benefits disadvantaged areas		5
Maximum points for Category 4 – Affordability			25

The Division recommends that Category 4 be awarded points for the same amounts and line items as included in the Priority Rating Systems for other program types with the following exception:

The priority points for projects benefiting disadvantaged areas are intended to provide additional priority points for communities with pockets of disadvantaged areas pursuing projects with direct benefit to those service areas. Communities where the entire service is disadvantaged based on the affordability criteria already receive additional priority in items 4.A, 4.B, and 4.C. The Division recommends that only applicants with 3 or less LGU indicator values in line item 4.C be eligible to receive additional points under 4.D. Applicants with 3 LGU indicators and eligible for 3 points in line item 4.C. and eligible for 4.D would be limited to the 5 points in 4.D. If approved in the final LSLR IUP, this change would also be included in future updates to the Priority Rating Systems for other project types.

The Division will also seek public comment on the use of alternative methods for item 4.B. that consider both rate and the income level of a poorest portions of a service area.

The draft LSLR fund Priority Rating System in its entirety is shown in Attachment A.

Staff Recommendation

Staff recommends that Authority approve the Draft DWSRF LSLR Priority Rating System for public review.