

State Water Infrastructure Authority
Meeting Date: April 18-19, 2023
Agenda Item P – FY 2022-23 Priority Rating System Approval 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).

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 (PRS), which contains the priority points that are applied by Division staff when an application for funding is evaluated. The Division proposes the PRS 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”.

At the Authority’s February 2023 meeting, the Division proposed a Draft PRS for BIL DWSRF LSLR Funds, and the Authority approved the Draft PRS for public review.

The Division provided a public comment period from March 7 through April 7, 2023. The following summarizes the comments received, provides staff response to each comment and includes staff recommendations for action on the PRS. In summary, staff appreciate the comments and recommendations provided.

Commenters provide suggestions that could potentially provide additional separation between projects if the existing PRS is not sufficient to differentiate projects for funding. Staff will consider all of the comments and suggestions not included in the approved PRS for future rounds if project demand exceeds available funds and staff have difficulty establishing priority differences between large groups of projects, or if staff feel projects are not being effectively prioritized for funding.

Public Comments and Staff Response

Comments on Project Purpose

Comment: A project that inventories lead service lines (LSLs) without replacement is the lowest scoring in the Project Purpose category of the PRS. While it can be argued that

construction projects that will eliminate LSLs should be given the highest priority, we do not see a need to pit these project purposes against each other. Instead, we propose creating two pots of funding from which to make awards, one for construction projects and one for inventory projects. By segmenting the funding, the Division could ensure that some of the money will go to construction projects while not passing over inventory projects due to lower priority scoring.

Response: It is the Division's intent to prioritize replacement of known LSLs to remove the risk to public health posed by lead without delay. The proposed PRS reflects this priority. Caps on construction project funding per applicant will limit the ability of construction projects from using all of the available lead service line funding in any given funding round. The Division will re-evaluate the need to segment the funding into inventories vs. construction funding as more project information becomes available through project solicitation and applications. Staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: We believe Project Purpose should be split into two main sections, one covering construction projects and the other covering inventory projects. This way the same PRS can be used for any applicant, with the nature of the application determining which line items apply. This effort would be worthwhile to make sure water systems that need funding for a lead service line inventory are competitive.

Response: It is the Division's intent to prioritize replacement of known LSLs to remove the risk to public health posed by lead without delay. The proposed PRS reflects this priority. As noted above, staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: Inventory projects should be weighted equally to replacement projects. The current PRS disfavors inventory projects by awarding these projects fewer points than replacement projects. While we understand the desire to quickly fund projects that remove LSLs, robust system inventories are a necessary first step, and utilities that have not yet performed inventories should not be placed at a disadvantage by the lower scoring.

Response: Inventorying is an important first step for all water systems, although not every water system that inventories will identify LSLs in their service area. Removal of known LSLs is an urgent step to minimize actual public health risk. The Division's intent is to prioritize replacement of known LSLs to remove the risk to public health posed by lead without delay. As noted above, staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: Recommend revising the Project Purpose section of the PRS to have only two project purposes: 1. Lead Service Line Replacement and 2. Lead Service Line Inventory and Investigation. Having two project purposes would simplify this process and be consistent with the basis of the Lead and Copper Rule Revisions (LCRR) and the goals listed above.

Response: The proposed PRS reflects the Division’s intent to prioritize replacement projects over inventory projects and, among replacement projects, those projects where the location of LSLs is already known and does not require preliminary field investigation since these projects are ready to proceed. **Staff recommend no change from Draft IUP/PRS.**

Comment: Inventory work should be prioritized in the initial awards to help utilities meet the LCRR compliance deadline. Many utilities have not begun or are just beginning their inventory. Having more of these funds available initially for this work will assist them in this process.

Response: It is the Division’s intent to prioritize replacement of known LSLs to remove the health risk posed by exposure to lead without delay. As noted above, staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: It is unclear which Priority Purpose the replacement of lead or galvanized goosenecks, pigtails, and connectors would fall under. If a project is proposing to replace all these appurtenances that have been identified in a water system, our assumption would be to claim Item 1.A as the project purpose. We suggest clarifying this in the PRS and in the guidance if projects solely to replace such appurtenances can be funded as stand-alone projects under this program. This would also include clarification for where these types of projects fall under the maximum funding amount tiers.

Response: A project replacing known lead or galvanized service line appurtenances qualifies for Line Item 1.A Project Purpose points and associated funding cap. Replacement projects that require preliminary field identification of actual appurtenances’ material (so called “find and replace” projects) qualify for Line Item 1.B Project Purpose points and associated funding cap. **No change was proposed for the Draft IUP/PRS.**

Comment: Municipalities lack historical system data on LSLs and are not ready to propose construction projects. Construction and inventorying grants will directly compete against each other. The PRS must ensure that systems that need inventory can complete competitive inventory projects compared to construction projects. We recommend considering funds to be set aside solely for inventorying or make inventorying a higher scoring priority for the initial LSLR funding cycles only.

Response: It is the Division's intent to prioritize replacement of known LSLs to remove the risk to public health posed by lead without delay. As noted above, staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: The PRS does not reflect the short-term goal stated in the IUP of working closely with utilities to rapidly complete their LSL inventories by the LCRR October 2024 deadline. Will DWI consider changing the points value for each line item in Category 1, Project Purpose, to reflect completing the inventory as the highest priority project?

- 1.A Replacement of known lines – 15 pts
- 1.B Replacement Find and Fix – 10 pts
- 1.C Inventories – 25 pts

A majority of smaller utilities have not begun an inventory, and these funds will best be served helping them get started.

Response: It is the Division's intent to prioritize replacement of known LSLs to remove the risk to public health posed by lead without delay. The proposed PRS reflects this priority. The Division is pursuing an alternative approach to assisting small water systems that need directed assistance to complete their LSL inventories outside of the competitive funding application process, through the use of set-asides. As noted above, staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Comment: Broadly, projects that replace LSLs and related appurtenances are given the most attention in the IUP and the highest priority in the PRS. This is an understandable decision, and we support the Division's commitment to this effort.

Response: Comment acknowledged. **No change was proposed for the Draft IUP/PRS.**

Comments on Project Benefits

Comment: While in support of keeping the PRS simple, there should be more Project Benefit points for great LSLR projects than for good LSLR projects. For instance, if two LSLR projects both lack Lead Action Level exceedances, the PRS perhaps should consider awarding Project Benefits points to the project with the oldest lines, the leakiest lines, or with lines that can be relocated for resiliency, etc.

Response: All service lines containing lead are considered a public health risk regardless of their age. Leakiness or resiliency are not significant factors with respect to the risk to public health posed by lead in service lines. **Staff recommend no change from Draft IUP/PRS.**

Comment: Lab tests of water samples taken at three addresses in our system where lead goosenecks were identified and replaced yielded both lead and copper concentrations below the respective detection levels in all samples, whether collected before or after the lead gooseneck replacement. This is believed to be the result of using orthophosphate as a corrosion inhibitor in the distribution system. It is felt that additional priority points for Lead Action Level exceedances may favor systems that are not doing their utmost to protect their customers' health and safety.

Response: For protection of public health, projects in areas where lead action level exceedances have been documented should be prioritized over similar projects in areas where exceedances have not been reported. **Staff recommend no change from Draft IUP/PRS.**

Comment: In Category 2 – Project Benefits, we recommend only a single line item for utilities that have already exceeded the current action levels or will exceed the revised levels. The purpose for this program and this work is to address lead levels and replace service lines. There is no practical difference between the two line items, as all applicants should claim and receive the maximum points.

Response: The two line items in the Project Benefits category of the PRS reflect the Division's intent to prioritize removal of lead from service lines that are known to be contributing to the lead action level exceedance (Item 2.A) over inventorying or verifying LSLs that may be the cause of the lead action level exceedance (Item 2.B). **Staff recommend no change from Draft IUP/PRS.**

Comment: For Project Benefits, we believe that a boost in priority should be given to any system able to document a lead action level exceedance. While we understand the Division's attempt to differentiate between scenarios in which an exceedance is found, we believe that any jurisdiction facing this problem deserves increased priority, no matter what project they are proposing. This is especially important given that the action level of fifteen (15) parts per billion (ppb) is well above the established maximum contaminant level goal of zero (0) ppb, reflecting the determination that, according to toxicological and biomedical considerations, there is no level of lead in drinking water deemed protective of public health. We also recommend a second Project Benefit line item that encompasses other indicators of possible lead contamination in a jurisdiction, such as the water quality reports, DHHS testing, and building age factors we mentioned earlier.

Response: The Department's Public Water Supply Section supports the use of the Action Level, as included in the PRS, as the appropriate threshold for additional prioritization. Additional factors may be considered in future prioritization based on funding demand. **Staff recommend no change from Draft IUP/PRS.**

Comment: In Category 2 – Project Benefits, we recommend revising to include communities whose 90th percentile lead concentration will trigger the most recent action level.

Response: The Department's Public Water Supply Section supports use of the 90th percentile of lead sampling data in consideration of a Lead Action Levels exceedance. Application guidance will establish documentation requirements to demonstrate a Lead Action Level exceedance for these priority points. **Staff recommend no change from Draft IUP/PRS.**

Comments on Affordability Criteria

Comment: The PRS should use Justice40 designations of disadvantaged communities rather than the LGU Indicators, since the LGU Indicators do not include race, which is a key demographic info for effective equitable distribution. Quite simply, the use of the Climate and Economic Justice Screening Tool (CEJST) would be more accurate in targeting the communities most in need.

Response: The IUP provides an option for communities not eligible for additional subsidy using the affordability criteria to be eligible for additional subsidy for projects benefiting disadvantaged areas within their service area (line 4.D). CEJST is one of several screening tools that the Division would allow as a demonstration that a particular area is disadvantaged. **Staff recommend no change from Draft IUP/PRS.**

Comments on Public Engagement/Education

Comment: The PRS should add significant points for utilities that collaborate with customers to provide public maps of where replacements are planned, have occurred, and places where the service line material is unknown.

Response: The LCRR requires that the LSL inventory be made publicly accessible. The inventory must include a location identifier associated with each LSL. Water systems serving greater than 50,000 people must make the inventory available online. **Staff recommend no change from Draft IUP/PRS.**

Comment: The PRS should add significant points for utilities that collaborate with customers during replacements to ensure that whole house flushing occurs for the customer, and the water system should waive the costs of water from flushing. The household plumbing post replacement flushing should be completed consistent with AWWA's Full lead service line replacement standard ANSI/AWWA C810-17.

Response: Compliance with all applicable standards and provisions of the LCRR , including post-LSLR flushing of the premise plumbing, will be a condition of the funding offer. **Staff recommend no change from Draft IUP/PRS.**

Comment: The PRS should add significant points for utilities that collaborate with customers to include customer input on the replacement process, including awareness of the need for filters following installation, the need for non-routine testing, decisions about the material of replacement pipes, prioritization of neighborhoods (street-by-street, without one-offs), and scoping of potential rate hikes.

Response: Until there is sufficient project demand to justify requiring additional levels of prioritization, staff do not support additional application requirements to the funding program. The draft IUP includes the Division's plan to use available set-aside funds to provide technical assistance to communities. Set-aside funds can be used to support the recommended activities. **Staff recommend no change from Draft IUP/PRS.**

Comment: The PRS should add significant points for utilities that collaborate with customers to use the best available records and information, as well as predictive modeling to identify LSLs or potential LSLs. Unknown service lines should be evaluated based on the best available information, random sampling, and predictive modeling to maximize the accuracy of the inventory and LSL replacement program.

Response: Identification of LSLs must be documented using approved methods consistent with LCRR/PWSS requirements. **Staff recommend no change from Draft IUP/PRS.**

Comment: The PRS should add significant points for utilities that collaborate with customers to identify LSLs (e.g., citizen science) and give input on prioritization and sequence of neighborhoods receiving replacements.

Response: Identification of LSLs must be documented using approved methods consistent with LCRR/PWSS requirements. The recommendation will be shared with SWIA for consideration. **Staff recommend no change from Draft IUP/PRS.**

Comment: The PRS should add significant points for utilities that collaborate with customers by providing accessible communication in terms of language and literacy levels.

Response: Until there is sufficient project demand to justify requiring additional levels of prioritization, staff do not support additional application requirements to the funding program. Set-aside funds can be used to develop resources for public education. The recommendation will be shared with SWIA for consideration. **Staff recommend no change from Draft IUP/PRS.**

Staff Recommendation

Many commenters expressed concerns that the existing IUP and PRS may not provide sufficient prioritization for projects seeking funding for LSL inventory work to meet the LCRR.

Commenters requested consideration for either providing increased priority for inventory work compared to service line replacement work, or to set aside funds for inventory work to better assure that funds will be available to communities needing to complete inventory work prior to the end of 2024. EPA was clear that replacement of lines is the priority of the funds; however, staff recognize that without proper inventories, communities will not be in a position to seek funding for the replacement work. Staff do not have sufficient information on project demand to know if there will be application requests for replacement projects such that inventory projects will not be in the funding range. Caps on service line replacement (construction) funding per applicant will limit the ability of construction projects to use all of the available LSL funding in any given funding round. The Division will re-evaluate the need to segment the

funding into inventories vs. construction funding as more project information becomes available through project solicitation and applications. Staff support narrowing priority points available for different project purposes to better assure funds are distributed to the different project types. **Staff recommends reducing priority points for line item 1.A from 25 to 20 points.**

Division staff recommend that the Authority approve the PRS for the BIL Drinking Water State Revolving Fund LSLR Fund as shown in the attachment.

PRIORITY RATING SYSTEM for Lead Service Line Replacement Projects

The following PRS applies to projects where the entire project scope is eligible for LSLR funds.

2023 PRIORITY RATING SYSTEM for Lead Service Line Replacement Projects Eligible for BIL DWSRF-LSLR Funds			
<p><u>Instructions:</u> For each line item, mark “X” to claim the points for that line item. Be sure that your narrative includes justification for every line item claimed. At the end of each Category, provide the total points claimed for each program in the subtotal row for that Category. Then add the subtotals from each category and enter the Total of Points for All Categories in the last line. Note that some Categories have a maximum number of points allowed that may be less than the total sum of individual line items.</p>			
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) OR		25 20
1.B	Project establishes and implements a program to find and replace lead service lines in areas suspected to have lead service lines OR		15
1.C	Project inventories lead service lines (no replacement)		10
Maximum points for Category 1 – Project Purpose			25 20
Subtotal claimed for Category 1 – Project Purpose			
Line Item #	Category 2 – Project Benefits	Claimed Yes/No	Points
2.A	Project addresses/resolves documented Lead Action Level Exceedance OR		5
2.B	Project area has documented Lead Action Level Exceedance		2
Maximum points for Category 2 – Project Benefits			5
Subtotal claimed for Category 2 – Project Benefits			
Line Item #	Category 3 – System Management	Claimed Yes/No	Points
	Reserved for future consideration		
Maximum points for Category 3 – System Management			0
Subtotal claimed for Category 3 – System Management			N/A
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

2023 PRIORITY RATING SYSTEM for Lead Service Line Replacement Projects Eligible for BIL DWSRF-LSLR Funds			
4.B	Current Monthly Combined Utility Rates at 5,000-gallon 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
Subtotal claimed for Category 4 – Affordability			
Total of Points for All Categories			