



**Clean Water and Drinking Water State Revolving Fund Programs:
Federal Fiscal Year 2023 Intended Use Plans
Comment and Response Document**

INTRODUCTION

On June 3, 2023, the Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Pennsylvania Department of Environmental Protection (DEP) published notice in the *Pennsylvania Bulletin* [53 Pa.B.3057] of the availability for public comment on the Clean Water and Drinking Water State Revolving Fund Programs Intended Use Plans (IUPs) for Federal Fiscal Year (FFY) 2023. The IUPs demonstrate the Commonwealth's plan to utilize the State Revolving Funds (SRFs) and include detailed information that shows how the SRF program is intended to be implemented. These IUPs include a list of drinking water, wastewater treatment, nonpoint source, and pollution abatement projects to be considered for a design and engineering or construction loan or grant from funds the Commonwealth expects to receive from the United States Environmental Protection Agency (EPA) through the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs for FFY 2023. The DWSRF includes the Base Grant funds as well as new supplement grant funds made available through the FFY 2023 Federal appropriation, under the Federal Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-27) including appropriate state match funds and principal, interest, and investment income. In addition, the DWSRF IUP also applies to the FFY 2023 Bipartisan Infrastructure Law (BIL) Grants—General Supplemental, Lead Service Line Replacement and Emerging Contaminants and the appropriate State match funds. The CWSRF includes the Base Grant funds as well as new supplement grant funds made available through the FFY 2023 Federal appropriation under Title VI of the Water Quality Act of 1987 including appropriate State match funds and principal, interest, and investment income. In addition, the CWSRF IUP also applies to the FFY 2023 BIL Grants—General Supplemental and Emerging Contaminants and the appropriate state match funds.

The projects to be considered for a loan or grant from the DWSRF and CWSRF programs must meet the Federal requirements for funding in accordance with the Federal Safe Drinking Water Act (42 U.S.C.A. §§ 300f—300j-27) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1388). Accordingly, the projects included in the IUPs are expected to meet the requirements applicable to the use of the DWSRF and CWSRF loan or grant funds. Projects listed in the FFY 2022 IUPs are on the Commonwealth's Project Priority Lists (PPLs) and are expected to proceed with design and engineering or construction within the next two years. A project must appear on an IUP before it can receive a loan or grant from the SRF programs. A project's readiness to proceed and the reasonable availability of alternative funds also have a bearing on project selection for the IUPs. Consequently, the rank-ordered list of projects on the PPLs does not solely dictate the order in which projects will be chosen for inclusion in an IUP.

The DWSRF will be capitalized with an approximated maximum of \$266.2 million in Federal funds (\$265.9 million for FFY 2023 and \$316,000 from an FFY 2021 reallocation) and \$10.2 million of State match funds. Approximately \$10.8 million of these funds will be set aside for technical assistance to small systems, operator training and certification, and source water assessment and protection, as authorized under the Federal Safe Drinking Water Act. The DWSRF IUP also includes a narrative work plan that describes how these set-aside funds will be used. PENNVEST is also allocating \$10.6 million for administrative purposes. Finally, approximately \$137.9 million will be set aside for additional subsidy for primarily disadvantaged communities. The FFY 2023 DWSRF grant does not have a requirement to set aside funding for green infrastructure projects. However, the Commonwealth will continue to promote green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of four categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

The CWSRF will be capitalized with an approximated maximum of \$120.7 million in Federal funds and approximately \$14.1 million in State match funds. Approximately \$1 million will be set aside for the Onlot Sewage Disposal Program. Finally, approximately \$54.8 million will be set aside for additional subsidy for primarily disadvantaged communities and approximately \$12.0 million must be set aside for green infrastructure projects that meet the EPA criteria for green infrastructure and can fall into one or more of four

categories: (1) water efficiency; (2) energy efficiency; (3) environmentally innovative; and (4) green stormwater infrastructure.

A 30-day comment period was provided on the FFY 2023 CWSRF and DWSRF IUPs, and interested parties were directed to submit comments to DEP's eComment system or by e-mail to ecomment@pa.gov. The comment period ended on July 3, 2023.

DEP and PENNVEST received comments and questions from different individuals and organizations during the comment period. The purpose of this document is to present DEP's and PENNVEST's responses to these comments and to explain how the comments were considered in finalizing the CWSRF and DWSRF IUPs.

The names and, where available, addresses of individuals who submitted comments are identified in Attachment A, in no particular order. This document presents each comment received and identifies the commenter(s) by number in parentheses, corresponding to the list in Attachment A. Copies of all comments received during the public comment period are posted on the Department's eComment website at <https://www.ahs.dep.pa.gov/eComment/>.

COMMENTS AND RESPONSES

Comments received on CWSRF and DWSRF IUPs

- 1. Comment:** "Because of the capital intensity of water and wastewater systems, and the necessary decrease in rates resulting from spreading capital investment over more customers, larger systems should be encouraged, not punished. These systems provide safe and reliable services for millions of Pennsylvanians, many of whom live in economically distressed communities and are themselves economically distressed, and who end up facing increased rates in part because PENNVEST provides their water systems with fewer opportunities to compete for grant dollars. Moreover, the PENNVEST policy creates an unequal system between larger and smaller systems with the larger being required to borrow and pay back money with interest for needed funds while others are provided with free dollars even though all have the need for capital investment." "PENNVEST should permit systems to be segmented based on the geographic location of individual communities (and the projects undertaken in those communities) to allow grant funding for projects carried out within economically distressed communities. Moreover, PENNVEST should also allow grant funding for overall system improvements, such as water treatment plant and storage facility upgrades, for that portion of the project that directly benefits the economically distressed communities." (5)

Response: The PENNVEST affordability analysis is utilized to measure whether an applicant is "disadvantaged" for purposes of determining project funding. The core of the PENNVEST affordability analysis looks at the system-wide residential user rate to determine if the applicant is "disadvantaged." If an applicant is deemed "disadvantaged," it becomes eligible for hardship funding, which may include an extended term, a lower interest rate or grant or principal forgiveness loan funds. The primary goal of the PENNVEST hardship funding program is to provide an incentive to disadvantaged communities to construct critical infrastructure projects that would not otherwise occur in the absence of the additional incentives, consistent with Section 10(e) of the Pennsylvania Infrastructure Investment Authority Act (35 P.S. § 751.10(e)). In addition, the definition of "disadvantaged" communities under the CWSRF IUP and DWSRF IUP is reviewed and approved by the United States Environmental Protection Agency, consistent with the requirements and goals of the State Revolving Fund programs. Also, see response to comment #14, below.

- 2. Comment:** “PENNVEST should continue promoting grant funding to meet the levels set forth in the BIL which seeks to distribute 49% of all funding in the form of grants. PENNVEST should also consider including grant funding in multi-year funding requests.” (5)

Response: PENNVEST regularly conducts in-person outreach sessions across the Commonwealth in addition to attending trade shows, conferences, and individual consultations promoting the financing that is available through PENNVEST which includes funding provided by the BIL and the principal forgiveness dollars it provides. Programmatic financing is available when multiple projects are implemented over a series of years under one funding agreement. PENNVEST does not give consideration for principal forgiveness funding under the Programmatic Financing Program because the projects are dynamic with no guarantee they will all be implemented within the time limits of the program. As a result, it would not be prudent to tie up grant dollars on projects that may or may not get implemented within the timeline of the program. Projects can still come in on an individual basis for consideration of principal forgiveness dollars.

- 3. Comment:** “PENNVEST should consider allowing Programmatic Financing (Pro-Fi) projects to be eligible for grants or principal forgiveness awards. The current requirement of awarding grants to projects submitted under the traditional PENNVEST funding program is not aligned with the benefits of the Pro-Fi program.” (5)

Response: See response to Comment #2, above

- 4. Comment:** “PENNVEST should consider the geographic communities within a system that will benefit from a project. This will allow a larger municipal system to be segmented when considering grant dollars for projects. PENNVEST’s process should be specific regarding its criteria for determining whether grant dollars may be used for a project within a geographic area and should provide larger municipalities with equal opportunities to receive such dollars.” (5)

Response: See response to Comment #1, above.

- 5. Comment:** "Economies of scale are not always the right policy. The break-down in large systems during the recent pandemic was Exhibit A for revealing the vulnerability of large integrated systems when one link in the chain is broken. While large systems have a management-efficiency appeal, they don't automatically result in a cleaner water supply, or are as responsive to water customers. Larger systems are inherently more at risk to disturbance as they affect many more users. Resiliency is built in part through small scale redundancies. We suggest revising this policy as follows: 'Water systems should be appropriately scaled to achieve the best environmental outcomes and customer service.'" (10)

Response: We generally agree that economies of scale are not the right policy for every situation; however, in the area of drinking water system sustainability, there are benefits of economies of scale as noted in the document. Additionally, based on experience, technical, managerial, and financial capacity of larger system is a strength of many larger systems.

- 6. Comment:** “The fix-it-first policy is also outdated, given the number of viable alternatives that green infrastructure can provide. Replacing existing infrastructure with like infrastructure is not always the best policy, economically or environmentally. Replacing structural with nonstructural solutions can greatly reduce future engineering and repair costs, as well as save on electricity and ongoing maintenance costs. Suggest revising this policy as follows: 'Infrastructure replacement should be viewed with an eye to future maintenance costs, and to improving on current hardscape infrastructure where green infrastructure solutions are possible and economical.'" (10)

Response: We do not believe that the fix-it-first policy limits the ability of the system to select a sustainable solution to address their problems. The section refers to replacing existing infrastructure which could include either structural or nonstructural alternatives. As a potential application evaluates the alternatives to addressing the problems that it is facing, it must do an alternative analysis and evaluate potential options to address its issues. The burden on the potential applicant to choose the most cost-effective option. These could be structural or nonstructural. Given that the program is an infrastructure financing program, in most cases for drinking water projects, the resulting project will culminate into a structural project as most solutions for drinking water-type infrastructure projects are structural solutions.

7. **Comment:** “The Small Project Initiative is an excellent direction and should be expanded for small and underserved communities. This type of approach should be replicated everywhere, including in the USDA 2023 Farm Bill.” (10)

Response: Thank you for your support for this program. Small and underserved communities are eligible to participate in the Small Project Initiative.

8. **Comment:** “The 2023 high priority project list is discouraging in its sameness and repetition of pipe-replacement projects. We encourage prioritizing a broader set of projects, including those that address drinking-well PFAS contamination, as the ranked Perkasio project does.” (10)

Response: With the current sources of available funds, PENNVEST anticipates being able to fund all projects that are eligible for financing and ready to proceed, as further supported by the fact that PENNVEST has financed every project that has been administratively and technically ready to proceed since 2015. Current funding sources, including those funds available under the BIL prioritize both lead remediation, including line replacement projects, as well as PFAS contamination on both the Clean Water and Drinking Water side.

9. **Comment:** “[L]arger manure storage pits (the majority of projects on the 2023 project priority list) are not green. Built infrastructure to capture manure from overcrowded confined animal operations should not be subsidized by PA or US taxpayers. The manure is simply stored longer, not reduced or eliminated, and therefore not a long-term solution to cleaner water. Green rooftop projects, wetland restoration, swales, and conversions from CAFOs to livestock grazing are all practices that should be encouraged and supported with these loans to provide long-term clean water solutions and actual pollution reductions.” (10)

Response: Animal waste storage structures, including large manure storage pits, meet EPA’s definition of green. The goal of these projects is to provide enough storage that the manure can be spread at appropriate times and intervals, reducing the nutrient concentrations in the stormwater runoff from the fields and existing storage. Pennsylvania, through the use of funds available under the State Revolving Fund programs, has the ability to fund all agricultural best management practices that the United States Environmental Protection Agency has determined have a water quality benefit. While it is acknowledged that some best management practices create greater benefits than others, PENNVEST anticipates being in a position to fund all projects that are eligible for financing and ready to proceed.

10. **Comment:** “Ranking Framework. The current cost/benefit descriptions need revision. Under stormwater examples, the high-cost category puts large trees (>2 1/2”), which may cost \$50 apiece or more at a retail nursery and less at a wholesale nursery, in the same grouping as new manure containment structures (\$600,000+). Given that the purpose of adding new trees for stormwater retention, erosion reduction and water quality filtration does not require giant trees, these sized trees should be eliminated from the

category and not recommended at all. Bare root seedlings and even saplings are a better choice, cheaper, and do not require as much cost or labor to install...” (10)

Response: The examples provided in the IUP are general examples of high, medium, and low-cost Best Management Practices (BMPs) across different types of projects. Most trees planted using PENNVEST funds are not large caliper, but the provided example illustrated a higher cost BMP. Projects are evaluated based on overall cost of the project. Projects are assigned a cost rating of high, medium, or low based on the costs of projects previously funded by PENNVEST. In addition, every project has to go through an alternatives analysis and identify the least cost alternative. PENNVEST only funds the least cost alternative on a present worth basis that is environmentally sound for the water issue being addressed.

11. Comment: “A better classification system would be to use honest costs and separate all practices into low cost (\$12-\$200), medium costs (\$200-\$500K) and high costs (\$500k+) as the document does elsewhere. The current hodgepodge categories and price lists seem misleading and arbitrary.” (10)

Response: While individual practices factor into the cost, projects are evaluated based on the total project cost in order to assign high, medium, or low classification. Projects are assigned a cost rating of high, medium, or low based on the costs of projects previously funded by PENNVEST. In the past the average cost for an agriculture project is different than urban green infrastructure or an abandoned mine drainage project. There is a goal to not favor one type of non-point source project over others. PENNVEST is currently evaluating its project ranking system and will consider this comment in its review.

12. Comment: “Basic project practices to increase soil health include the use of cover crops, no-till farming, and livestock grazing. These practices enrich soils, and healthier soils can retain an additional 20,000 gallons of rainwater per acre per storm event for every additional 1% of organic matter in a given farm soil, helping prevent flood damage and the water pollution it creates... Given the relatively modest cost of these practices - USDA estimates cover crops should average \$37/acre/year, and no-till costs involve savings to farmers and the need to rent or purchase a no-till drill (\$200-\$4,000 or less if shared), we encourage Pennvest to add these practices to the list of NPS control strategies fundable by the CWSRF.” (10)

Response: See response to Comment #9, above.

Comments received on DWSRF IUP

13. Comment: “Fulfill Justice40 requirements by recognizing and addressing environmental justice in the DWSRF. Incorporate pollution and health criteria into the definition of 'disadvantaged community' to ensure the most impacted communities can afford and access clean water.” As expressed by one commentator, while the mapping tool used by DEP considers minority populations and federal poverty levels as indicators used to identify EJ areas and prioritizes them for outreach for the DWSRF, these areas “should also be considered as disadvantaged communities and prioritized for technical assistance. Additionally, the U.S. EPA’s EJSCREEN map contains EJ Index indicators that would strengthen Pennsylvania’s map to consider existing environmental inequities.” (1, 2, 3, 4, 6)

Response: Justice40 communities have been defined by the United States Environmental Protection Agency (EPA) as those communities that are deemed “disadvantaged” under the States’ affordability analysis. PENNVEST’s affordability analysis already meets and exceeds the Justice40 goals set by EPA. Since its inception in 1988, 42% of all PENNVEST loan dollars and 40% of all PENNVEST principal forgiveness dollars have gone to Justice40 communities. In the ’22-’23 Fiscal Year, 89% of federal DWSRF dollars and 46% of federal CWSRF dollars went to Justice40 communities (PENNVEST funded

projects in Justice40 communities can be accessed on the PENNVEST website under “Approved Projects.”).

Despite the fact that PENNVEST is already in compliance with EPA’s Justice40 goals, PENNVEST has decreased the requirements of the affordability analysis from 1.5% of median household income to 0.5% and 1.25% of median household income in an effort to make more communities qualify as disadvantaged communities which in turn will increase dollars going to Justice40 communities

For the purpose of defining technical assistance eligibility, disadvantaged communities are those Environmental Justice (EJ) communities which are defined as: DEP-identified EJ Areas (see <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx>), and the areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ’s Climate and Economic Justice Screening Tool (see <https://screeningtool.geoplatform.gov/en>).

PENNVEST’s technical assistance contractor, DEP’s existing and new technical assistance staff, and EPA’s partnership with states to stand up technical assistance hubs will also play a significant role in helping small, rural, and disadvantaged communities better understand the project development, implementation, and funding process.

- 14. Comment:** “Increase the transparency of the DWSRF application and PENNVEST process. Much of the current disadvantage communities designation is unclear to applicants and observers. Explicitly list the indicators, points, and calculations used to make this designation. Additionally, include what percentage of the funds are going to advantaged communities in the form of principal forgiveness and label which projects in the priority list are disadvantaged communities.” Moreover, one commentator recommends “proactively engaging community and environmental organizations well in advance of future Intended Use Plan releases or new rulemaking.” (1, 2, 3, 4, 6)

Response: Both IUPs contain sections which explain how the term “disadvantaged” is defined and utilized within the funding programs by both DEP and PENNVEST. PENNVEST’s project affordability analysis measures whether or not a project results in an applicant being considered “disadvantaged” for the purpose of project funding. As each applicant is required to complete a planning consultation, that is often the first opportunity for communities to better understand the financial capacity analysis and how their project/community would be impacted with PENNVEST funding. Hardship funding is made available to those systems whose affordability analysis shows that project affordability is a concern. In these cases, the project applicants are considered disadvantaged. The goal of the program is to provide incentives that can be used to enable infrastructure projects in disadvantaged communities that otherwise would not occur. In situations where a disadvantaged area is part of a larger system and the disadvantaged area has an identifiable census tract that is coincident with that area’s demographics, the financial capacity analysis can be performed considering households within that tract. PENNVEST’s technical assistance contractor, DEP’s existing and new technical assistance staff, and EPA’s partnership with states to stand up technical assistance hubs will also play a significant role in helping small, rural, and disadvantaged communities better understand the project development, implementation, and funding process. For the purpose of defining technical assistance eligibility, disadvantaged communities are those Environmental Justice (EJ) communities which are defined as (1) DEP-identified EJ Areas: <https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/PA-Environmental-Justice-Areas.aspx> and (2) the areas defined by the White House Council on Environmental Quality (CEQ) and the CEQ’s Climate and Economic Justice Screening Tool: <https://screeningtool.geoplatform.gov/en>. Also, see response to Comment #1, above. Additionally, by

definition, only disadvantaged communities are eligible to receive principal forgiveness. As a result, any project receiving principal forgiveness is a disadvantaged community.

- 15. Comment:** “Ensure affordability for customers of Investor Owned Utilities that receive DWSRF funds. Investor owned utilities (IOU) are different from public utilities as they are for-profit entities and are more likely to have unaffordable rates. Thus, when IOUs are able to receive state revolving funds it is important to have affordability measures in place.” (1, 2, 3, 4)

Response: Where user rates exist, the same affordability analysis is used for public utilities and investor-owned utilities. This allows PENNVEST to compare existing user rates to the combination of socio-economic factors that determine what users in that community can afford to pay, creating an even playing field for all users across the Commonwealth, whether they are served by a public utility or a private investor-owned utility.

- 16. Comment:** “Award project scoring points for disadvantaged community status to support prioritization for funds. These points would be in addition to the distressed and financial capability analysis scoring, as there are important aspects of environmental justice communities that are not simply financial.” As one group indicated, “this priority rating should include clear point values associated with known environmental justice issues.” (1, 2, 3, 4, 6)

Response: PENNVEST is currently evaluating its project ranking system and will consider this comment in its review.

- 17. Comment:** “Replace weak criteria to identify Disadvantaged Communities. Median Annual Household Income (MAHI) is a poor statistic to identify low-income populations that state revolving funds should target because MAHI is easily influenced by some residents with higher incomes. Instead, DWSRF criteria should consider the percentage of a community's population that falls below 200% of the federal poverty level.” “This measure better represents the actual number of low-income households in a community.” (1, 2, 3, 4, 6)

Response: Median household income is not used to identify low-income populations. It is utilized as a measure in conjunction with other socio-economic factors that are provided by Pennsylvania Department of Community and Economic Development, including the percentage of the population below the poverty rate, to determine a community’s ability to pay for a project.

- 18. Comment:** “Remove prioritization of consolidation and regionalization projects and add protections for the rights of local people. Without protections, these processes can result in loss of revenue, property, and local decision making power.” (1, 2, 3, 4)

Response: Consolidation and regionalization of systems has resulted in more efficient and better run systems, stronger environmental compliance, improved public health and protection, and enhanced financial stability. In our experience working with regionalization efforts, local officials can continue to play a strong role in the decision-making process. Ultimately, however, the decision to regionalize remains with the community and is not mandated or required by PENNVEST.

- 19. Comment:** “The Pennsylvania DEP must adjust the Disadvantaged Communities designation to Recognize Environmental Justice. The PENNVEST financial capability assessment used to designate eligibility for additional subsidy is biased to direct funding to small to mid-sized water systems where population is low and the cost per capita of infrastructure upgrades is high. It is poorly suited to direct subsidy toward large urban systems where the needed upgrades have been deferred for complex

regulatory and affordability reasons. The system, which relies heavily on Median Household Income as an indicator, does not account for the overlapping vulnerabilities of race, poverty, and cumulative environmental impacts... We urge PENNVEST to incorporate cumulative environmental impacts and Environmental Justice status into the affordability analysis.” (6)

Response: See response to Comment #13, above.

20. Comment: “Prioritize Combined Sewer Overflow (CSO) projects in Environmental Justice communities... PENNVEST’s current policies, especially the affordability and financial capacity criteria, are not working to direct BIL funding toward Pennsylvania’s biggest combined sewer overflow problems in an equitable manner. For each year of BIL implementation, dedicate a portion of the BIL supplemental funding as immediate principal forgiveness on loans, or loan refinancing, to the environmental justice communities with the largest CSO abatement needs.” (6)

Response: The BIL is clear in its direction on the use of principal forgiveness loan funds, and PENNVEST is required to comply with the terms and conditions of the various Capitalization Grants under which the funds are awarded to Pennsylvania. PENNVEST does not have the discretion to establish its own priorities for the use of BIL funds. To the extent Justice40 communities apply for project funding, PENNVEST will award principal forgiveness loan funds, as permitted under BIL and the applicable Capitalization Grant. See response to Comment #12, above, with regard to the definition of disadvantaged or Justice40 communities.

21. Comment: “The Pennsylvania DEP should remove the prioritization of consolidation and regionalization projects... Not only should these projects not receive higher points in the scoring system, but safeguards must be put in place to protect local oversight, governance, and ownership of assets. For systems with existing community governance (municipal and other systems), consolidation points should be awarded only if all communities that will have a system shuttered have held a resident vote (referendum) indicating their approval to consolidate their system, resulting in a system being shuttered.” (6)

Response: See response to Comment #18, above.

Comments received on CWSRF IUP

22. Comment: “... [P]rioritize funding support, i.e., grants and forgivable loans, to address the longstanding and significant environmental justice issues affecting Philadelphia’s waterway and communities.” Accordingly, PENNVEST should revise its affordability and financial capability criteria. “[W]e urge you to modify PENNVEST’s affordability and financial capability metrics as follows: Define Philadelphia and all PA-mapped Environmental Justice communities as “disadvantaged” for all applications for planning, design, and construction support (rather than just for design projects). Incorporate cumulative environmental impacts and Environmental Justice status into the affordability and financial capability analysis. Make additional policy changes to prioritize grants, principal forgiveness and loan refinancing for Philadelphia.” (7)

Response: See response to Comments #1 and #13, above.

23. Comment: “Align the IUP’s goals more directly with priorities to advance climate resilience, equity and nature-based green infrastructure.” The commentator mentions that highlighted legislation priorities include providing flexibility to meet local water needs, increasing investment in disadvantaged communities, and supporting resilience and One Water Innovation. PENNVEST can more “directly advance these objectives at the state level by including implementation of GSI in its short- and long-term

clean water goals... [U]nder Short-Term Goals, we recommend including the following: 'Accelerate implementation of green infrastructure by prioritizing and funding green and distributed infrastructure projects on both public and private property particularly in disadvantaged communities.' Under Long-Term Goals, we recommend including GSI alongside 'nontraditional' projects to state: '6. Continue to pursue opportunities to participate in green infrastructure and nontraditional projects and other best management practices in the Clean Water State Revolving Fund Programs.'" Also, the commentator suggested providing a flowchart illustrating the PENNVEST classification process for wastewater, stormwater, and nonpoint source projects, and fix a couple broken links. (9)

Response: The IUP contains a section on “Green Infrastructure Projects.” This section outlines the minimum proportions of the Base Grant and the General Supplemental Grant proposed to be used for green infrastructure funding. DEP and PENNVEST currently identify all projects with green components on the PPL. Identifying, prioritizing and funding water and energy efficiency projects, projects that implement green infrastructure and those that incorporate environmentally innovative solutions especially in environmental justice communities falls within DEP and PENNVEST’s short- and long-term goals.

24. Comment: In regard to green stormwater infrastructure projects (GSI): “PENNVEST can also expand GSI opportunities in the IUP for facilities eligible for stormwater projects... We recommend revising the section to clarify that green infrastructure projects beyond detention basins are eligible as follows: '(1) new or updated storm sewer systems to reduce stormwater or to separate stormwater from sanitary sewers and (2) detention basins and other green and distributed infrastructure projects on both public and private property to control stormwater runoff.’” (9)

Response: PENNVEST will consider clarifying that practices, in addition to detention basins, are eligible stormwater projects for both public and private applicants. Because of project classification criteria, most green stormwater infrastructure projects will be classified as Non-Point Source projects. Most Stormwater projects consist of traditional gray infrastructure to mitigate flooding.

25. Comment: “Update the scoring in the ranking frameworks to give more weight to nature-based infrastructure solutions... We recommend providing additional points for green and distributed infrastructure projects to incentivize applicants and accelerate the implementation of GSI projects across the state, particularly in disadvantaged and flood prone areas... to address stormwater runoff and pollution issues. Specifically we recommend increasing the points offered to projects in Environmental Justice (EJ) communities, and awarding additional points to GSI projects that would provide targeted benefits to EJ communities. We also recommend providing extra points for projects able to generate co-benefits for the community, such as improved air quality, workforce development and job creation, biodiversity conservation, increased community engagement, and reduced heat island effect. Finally, we recommend adding language to the IUP to include GSI eligibility under 'Public Health' in ranking frameworks.” (9)

Response: See response to Comment #16, above.

26. Comment: “Revise the IUP to clarify that green stormwater infrastructure initiatives on private properties are eligible and even preferred for SRF support... To expand and elevate GSI, we recommend creating a parallel grant opportunity for parcel-scale private property GSI to support stormwater capture and lessen flooding, particularly in disadvantaged communities. We also recommend including parcel-scale green infrastructure projects on private property in the Small Projects Initiative.” (9)

Response: See response to Comment #16, above.

27. Comment: "PENNVEST specifically includes the 'creation of green infrastructure projects' under 'Eligible Projects' for SLRLP funding. We recommend that PENNVEST also include 'green and distributed infrastructure projects on both public and private property' to highlight opportunities for GSI on private property for potential applicants. To that end, having a short evaluation of GSI alternatives or complementary strategies for conventional infrastructure projects in the to-be-developed general requirements for SLRLP could serve to spark interest in applicants who may not have considered GSI or were unaware of how GSI could supplement grey infrastructure and extend its life." (9)

Response: Green projects are currently eligible on both public and private properties.

28. Comment: "President Biden signed the Bipartisan Infrastructure Law, which directed record levels of federal funding to water infrastructure projects across the country, with 49% of that funding directed to be spent as subsidy on solving environmental justice issues. However, in Pennsylvania, PENNVEST's affordability and financial capability criteria prohibit Philadelphia from accessing that federal subsidy, and its loan criteria also seem to cap what is available to this city as well. Despite being the most diverse and impoverished municipality in the state, Philadelphia has received a disproportionately small distribution from PennVest over the past 35 years, forcing the city to rely overwhelmingly upon expensive market rate Water Revenue Bonds. We believe that changing these policies to meet the needs of the moment--by ensuring that Philadelphia can access both subsidy and additional loans--is an urgent matter of environmental justice. As a first step, we urge you to modify PENNVEST's affordability and financial capability metrics as follows: Incorporate cumulative environmental impacts into the analysis; and/or Define all PA-mapped Environmental Justice1 communities as eligible for additional subsidy across all phases of project planning, design, and construction." (11)

Response: See responses to Comment #1 and Comment #13, above.

29. Comment: "With the passage of the 2022 BIL, PENNVEST has begun to offer significantly more subsidy than in previous years—approximately \$40M in FFY223-24, 49% of which must be distributed to disadvantaged communities. Currently, PENNVEST's method of distributing these funds is grounded in a complex financial capability analysis but also may include some discretionary elements. With so much funding at stake, we strongly recommend the following additional transparency measures: ... Publish the equation used to distribute additional subsidy in the IUP and on the PENNVEST website... In the Annual Report, publish additional subsidy amount and type, as well as Green Project Reserve amount and category allocated to each project; and clearly mark which projects satisfy the 49% commitment to disadvantage communities... Proactively engage community and environmental organizations well in advance of future IUP releases or new rulemaking." (8)

Response: See response to Comment #1 and Comment #13, above. Additionally, the breakdown of how the funding is utilized to satisfy the requirements of the CWSRF and DWSRF, including principal forgiveness and Green Project Reserve, are detailed in the IUP and approved by EPA. Finally, the affordability analysis is described in detail on how it is used. The best opportunity to determine what a likely funding offer might be is to meet with a PENNVEST Project Specialist. Finally, PENNVEST provides a financial assistance simulator on its website which utilizes the affordability analysis to provide an unofficial hypothetical estimate of what PENNVEST financial assistance offer might be given the project specific assumption that are used as inputs to the simulator.

30. Comment: "New BIL funding offers a rare opportunity to pay for a portion of these upgrades without placing the burden on the local communities that can least afford to pay. However, PENNVEST's current policies, especially the affordability and financial capacity criteria (see below section), are not working to direct BIL funding toward Pennsylvania's biggest combined sewer overflows problems in an equitable

manner. For example, in the 2023-2024 IUP, two projects have been identified for investments to reduce combined sewer overflows in Pittsburgh (\$59M loan) and Philadelphia (\$45M loan). According to IUP Attachment 9, these projects were not selected for any grants/principal forgiveness, even though both cities are home to large Environmental Justice populations, and both cities have clearly articulated their financial challenges in federally-mandated Long Term Control Plans. Considering these difficulties and the federal funding opportunity at hand, we urge PENNVEST to address CSO abatement in large Environmental Justice communities as follows: ...For each year of BIL implementation, dedicate a portion of the BIL supplemental funding as immediate principal forgiveness on loans, or loan refinancing, to the largest Environmental Justice communities with the largest CSO abatement needs.” (8)

Response: A project, regardless of size, is eligible to go through PENNVEST's quarterly application process for funding consideration. A funding offer may be a loan, principal forgiveness loan, or a combination of both. The term "grant" requires an applicant to meet stringent federal requirements. So, principal forgiveness loans are offered to qualified applicants. The Small Project Initiative program is loan only as monies have been set aside with PENNVEST Board approval for this program. Over 40% of the existing program funding has been awarded to current EJ communities and the percentage going to EJ communities is expected to be maintained or expanded as a result of the infrastructure funding being made available and the changes being proposed. Also, see response to Comment #20, above.

- 31. Comment:** “PENNVEST uses a financial capability analysis to determine which communities are eligible for additional subsidy, and it appears that this assessment is also used to designate disadvantaged status." "Although changes have been made to align the 'disadvantaged community' definition with federal and state environmental justice maps, this is only relevant for design and engineering projects and not for construction, which is typically the larger cost... It is poorly suited to direct subsidy toward large urban systems where deferred upgrades are impacting large portions of Pennsylvania’s population. The system, which relies heavily on Median Household Income as an indicator, does not account for the overlapping vulnerabilities of race, poverty, and cumulative environmental impacts. For example, the City of Philadelphia is home to 1.5 million people, the majority of whom (66%) are Black, Indigenous, or People of Color and the majority of whom reside in Environmental Justice areas. Forty-five percent of Philadelphia households spend more than 2% of their income on water/sewer service, a level that is considered unaffordable by the EPA. However, Philadelphia is not considered eligible to receive principal forgiveness or grants. We urge PENNVEST to take additional action to address this matter as follows: ...Define all PA-mapped Environmental Justice communities as 'disadvantaged' for all applications for planning, design, and construction support (rather than just for design projects). ...Incorporate cumulative environmental impacts and Environmental Justice status into the affordability analysis. ...Make additional policy changes to prioritize grants, principal forgiveness, and loan refinancing for Environmental Justice communities to the extent allowed by law.” (8)

Response: See response to Comments #1 and #13, above.

- 32. Comment:** “Nature-Based Green Infrastructure... Pennsylvania would benefit from additional pathways for supporting (especially through grants) distributed, flexible, nature-based infrastructure, especially projects that can provide co-benefits within communities and on private property (like shade and improved air quality) and those that can increase resilience to the effects of climate change... PENNVEST’s Nonpoint Source program is well suited to advance nature-based infrastructure projects, and we appreciate the work PENNVEST has done to develop and implement this program. However, the current ranking criteria of the Nonpoint Source program seems to heavily favor privately-owned projects, including gray projects such as manure storage (in this year’s IUP) that reduce nutrients at the lowest possible cost without accounting for secondary benefits to communities. There is some ambiguity in the Intended Use Plan regarding what classifications and definitions are being used for the term “green

infrastructure.” On page 7, a project classification flowchart is referenced that does not appear to be available. On pages 7 and 8, “green infrastructure” is defined only as “all Nonpoint Source projects”, a category that, as discussed above, is not limited to projects that are primarily nature-based. Small (<\$500,000) grants are a critical resource for landowners and community organizations seeking to implement nature-based infrastructure projects, and the Nonpoint Source program has been effective at distributing grant funding. However, it is not clear from this IUP how affordability and thus grant eligibility is determined, and this makes it difficult to understand what types of entities should consider his program as a funding source. We ask that PENNVEST consider making several key program changes that would better promote multi- benefit, nature-based green infrastructure: ...Provide additional clarity on how the Nonpoint Program evaluates affordability and financial capacity of the owner/benefactor, including key criteria and thresholds for awarding principal forgiveness or grants... For the Nonpoint Source Project Ranking Criteria, modify both the Benefit-to-Cost criteria and the Planning criteria (attachment 4) to incorporate and prioritize community benefits of projects (such as shade, air quality improvements, public accessibility of green features, educational elements, etc.) in addition to water quality benefits; and increase bonus points for Environmental Justice communities... For the Stormwater Project Ranking Criteria, increase overall points for the Community Health category, particularly for green infrastructure and Environmental Justice communities... Explore alternative mechanisms for providing permanent support to external small grant programs for nature-based infrastructure projects, for example: A sponsorship program to allow utilities or other entities to direct grant funding for nature-based infrastructure projects in exchange for reduced interest rates. A permanent commitment to support existing grant programs for nature-based infrastructure (e.g., Growing Greener) using revolving fund interest payments... Provide additional information on how the Nonpoint Source program will address urban runoff consistent with the Commonwealth’s approved Section 319 Nonpoint Source Management Program Plan.” (8)

Response: The primary goal of the PENNVEST program is to improve water quality. It has been many years since PENNVEST has had to defer a project to the next PENNVEST Board meeting due to demand outpacing supply of funds. However, if this becomes an issue, PENNVEST will consider increasing the additional points for green infrastructure and projects located in an environmental justice community. Also, see response to Comment #8, above.

ATTACHMENT A LIST OF COMMENTERS

- (1) Susan Murawski, North East, PA
- (2) Jenny Tompkins, Meadville, PA
- (3) Gay Goden, Euclid, OH
- (4) Mr. Martin and Sharon McGladdery Farmington Hills, MI
- (5) Will Pickering, Pittsburgh Water and Sewer Authority, 1200 Penn Avenue, Pittsburgh, PA 15222
- (6) Jill Ryan, Freshwater Future, et al, P. O. Box 2479, Petoskey, MI 49770
- (7) Robert Ballenger, Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA 19102
- (8) Lia Mastropolo, American Rivers, et al, 5138 Locust Street, Philadelphia, PA 19139
- (9) Caroline Koch, WaterNow Alliance, 1016 Lincoln Blvd., San Francisco, CA 94129
- (10) Sara Nicholas, Pasa Sustainable Agriculture, 1631 N. Front Street, FL 1, Harrisburg, PA 17102
- (11) Stefanie Kroll, Riverways Collaboration of Culture Trust Greater Philadelphia, 1315 Walnut St., Suite 320, Philadelphia, PA 19107