

## AGENDA ITEM MEMO

**BOARD MEETING DATE:** August 10, 2023

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Ashley Harden, General Counsel  
Jessica Peña, Deputy Executive Administrator

**FROM:** Mark Wyatt, Director, Program Administration & Reporting

**SUBJECT:** Drinking Water State Revolving Fund Emerging Contaminants Intended Use Plan

### ACTION REQUESTED

Consider approving the State Fiscal Year (SFY) 2023 Drinking Water State Revolving Fund (DWSRF) Emerging Contaminants Intended Use Plan (IUP)

### BACKGROUND

The Infrastructure Investment and Jobs Act of 2021 (IIJA) appropriated capitalization grant funds for Federal Fiscal Years (FFY) 2022 to 2026 to reduce exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through drinking water and to help address discharges through wastewater and, potentially, nonpoint sources. This IUP covers the DWSRF capitalization grant funds allocated to Texas from FFY 2022 appropriations in the amount of \$59,202,000, plus \$1,077,040 that will be transferred from the Clean Water State Revolving Fund (CWSRF) FFY 2022 appropriations, for a total of \$60,279,040. Sufficient funds are being retained for all CWSRF Emerging Contaminants project proposals to be funded at the requested amount, although any funding provided would still be dependent upon the outcome of TWDB's review of the project details in a submitted application.

The appropriations require the entire amount allocated to project funding be provided as additional subsidization, which will be in the form of principal forgiveness. A total of \$57,910,960 is available for projects under this IUP as principal forgiveness. Per the IIJA, not less than 25% of the project funds must be provided to disadvantaged communities or public water systems serving fewer than 25,000 people.

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Jeff Walker, Executive Administrator

For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible, and the primary purpose must be to address emerging contaminants in drinking water. The focus will be on projects addressing perfluoroalkyl and polyfluoroalkyl substances, however, the program may fund as a lower priority projects for any contaminant in any of U. S. Environmental Protection Agency's (EPA) Contaminant Candidate Lists.

### **Program Highlights**

- a) As required by law, all project funding will be provided as additional subsidization, which will be in the form of principal forgiveness. All federal requirements apply to all project funding;
- b) Prioritizes proposals that have identified and will address PFAS. This is consistent with the federal appropriations;
- c) Prioritizes project proposals that request construction funding. This will ensure projects move forward in a timely manner and will allow a faster draw-down of Emerging Contaminants grant funds which will require invoices from Emerging Contaminants projects; and
- d) Within those that have identified and will address PFAS as well as requested construction funding, further prioritizes:
  - i. projects that will provide first-time service to connections currently unserved by a public water system that have found emerging contaminants in their current water source;
  - ii. projects that facilitate consolidation of one or more water systems into another water system that does not have emerging contaminants present or has removal capability;
  - iii. Disadvantaged communities or small systems consistent with the need to fulfill the federally required 25 percent reserve for these projects;
  - iv. Rural projects; and
  - v. Smaller systems based on the number of connections.

### **Eligible Project Proposals**

The TWDB invited entities to submit project proposals for this special funding from March 22 until May 23, 2023. As part of the solicitation for projects, a draft IUP narrative was provided for public comment.

The TWDB received 15 eligible project proposals requesting approximately \$175 million. No proposals received were considered ineligible.

**PUBLIC REVIEW, HEARING, AND COMMENTS**

A second opportunity was provided for public comment on the draft IUP, this time with the proposed project priority lists included, from June 29 to July 17, 2023. A public hearing was conducted in person on July 17, 2023, at 9:30 A.M. in Austin.

The TWDB reviewed and considered the two public comments received. The two comments were on the general program. No changes were made to the IUP based on the comments.

The public comment received during the public comment periods and the TWDB's response are shown in Attachment 1.

**KEY ISSUES**

The TWDB received sufficient project proposals to secure the entire FFY 2022 allotment for Texas. The TWDB is poised to move forward expeditiously with the beneficial work of reducing exposure to PFAS and other emerging contaminants throughout Texas.

Following approval of the IUP, the TWDB will apply to the EPA for the grant funds, followed afterwards by invitations to certain entities on the IUP's Project Priority List to submit a full application for review and consideration.

**RECOMMENDATION**

The Executive Administrator recommends approval of the SFY 2023 DWSRF Emerging Contaminants IUP with the ability to make non-substantive changes if necessary.

Attachments:

1. Response to public comments on the draft SFY 2023 DWSRF Emerging Contaminants IUP
2. Recommended Final SFY 2023 DWSRF Emerging Contaminants IUP

## **Texas Water Development Board**

### **Response to Comments on the State Fiscal Year 2023 Drinking Water State Revolving (DWSRF) Fund Emerging Contaminants Draft Intended Use Plan (IUP)**

The following provides a summary of the public comments received during the public comment period from June 29, 2023, to July 17, 2023, the Texas Water Development Board (TWDB) responses, and any changes to the recommended final SFY 2023 DWSRF Emerging Contaminants IUP.

(No comments were received during the first public comment period.)

#### **General Comments**

**Comment submitted by:** Anita Keese, Environmental Sciences Unit Director, Texas Department of State Health Services Laboratory

**Comment Date:** July 13, 2023

#### **Comment:**

Texas Department of State Health Services (DSHS) has been preparing for an anticipating the upcoming emerging contaminant requirements, expected to be rolled out in 2025. TCEQ contracts with a sampler and sends approximately 60% of the state's samples to us to analyze. We have been researching available funding opportunities for us to purchase equipment and equip our space to initiate PFAS sampling. This project may be eligible under the Clean and Drinking Water State Revolving Fund, but not according to the Drinking Water State Revolving Fund Intended Use Plan Emerging Contaminants Funding SFY 2023 plan on your website, and we are a critical link to the entire program. We ask for clarify and/or flexibility to accommodate equipping eligible laboratories in order to allow us to apply for this or other eligible funding.

#### **Response:**

The TWDB appreciates receiving the comments for the 2023 DWSRF Emerging Contaminants IUP. The project may be eligible under the program depending on the specifics of the ultimate use of the activity. Monitoring for the specific purpose of project development, including planning, design, and construction, may be eligible; however, regular operations and maintenance monitoring is ineligible.

#### **Change:**

None.

**Comment submitted by:**

Danielle Goshen; Policy Specialist/Counsel; National Wildlife Federation  
Marisa Bruno; Water Program Manager; Hill Country Alliance  
Adrian Shelley; Texas Director; Public Citizen  
Becky Smith; Texas Director; Clean Water Action  
Kristen Schlemmer; Legal Director and Waterkeeper; Bayou City Waterkeeper  
Annalisa Peace; Executive Director; Greater Edwards Aquifer Alliance  
Joanie Steinhaus; Ocean Director; Turtle Island Restoration Network  
Hillary Lilly; External Affairs Director; The Nature Conservancy Texas  
Stefania Tomaskovic; Ph.D.; Coalition Director; Coalition for Environment, Equity & Resilience (CEER)

**Comment Date:** July 17, 2023**Comment:**

This letter provides the formal comments on behalf of the undersigned organizations on the Draft SFY 2023 Drinking Water State Revolving Fund (DWSRF) Intended Use Plan (IUP) for Emerging Contaminants. The Texas Water Development Board (TWDB) has undergone immense growth in policy and financial responsibilities over the last decade. This trend will continue with the \$2.9 Billion in new federal funds for the Clean Water and Drinking Water State Revolving Funds (CWSRF and DWSRF, or SRFs) available to the TWDB via the Infrastructure Investment and Jobs Act (IIJA, also referred to as the Bipartisan Infrastructure Law) over the next five years.

Addressing emerging contaminants like per- and polyfluoroalkyl substances or PFAS is a pressing issue that we need to urgently address – as they compromise the health of our water supplies. According to the CDC, high levels of certain PFAS may lead to birth defects, increased risk of high blood pressure or pre-eclampsia in pregnant women, risk of cancers, and decreased vaccine response in children, among others.<sup>1</sup> Alarming, these chemicals do not seem to break down, and persist in water, soil, and even human blood – earning them the nickname of “forever chemicals.”

According to the Union of Concerned Scientists, nearly 500,000 Texans live within three miles of former and active military bases where firefighting foam has caused PFAS contamination levels hundreds to thousands of times higher than what the CDC deems safe.<sup>2</sup>

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<sup>1</sup>CDC, What are the Health Effects of PFAS? Available at: [https://www.atsdr.cdc.gov/pfas/health-effects/index.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.atsdr.cdc.gov%2Fpfas%2Fhealth-effects.html](https://www.atsdr.cdc.gov/pfas/health-effects/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.atsdr.cdc.gov%2Fpfas%2Fhealth-effects.html).

<sup>2</sup> Union for Concerned Scientists, A Toxic Threat: Government must act now on PFAS – Contamination at military bases (September 25, 2018), available at: <https://www.ucsusa.org/resources/toxic-threat-pfas-contamination-military-bases>.

- PFAS 3,255 times the safe exposure level found at Former Kelly Air Force Base near San Antonio with 129,998 people living within 3 miles of this site according to the U.S. Census Bureau;
- PFAS 61,818 times the safe exposure level found at Joint Base San Antonio-Lackland, Randolph, Ft Sam Houston, Camp Bullis, near San Antonio with 113,128 people living within 3 miles of this site according to the U.S. Census Bureau;
- PFAS 906 times the safe exposure level found at Former Bergstrom Air Force Base near Austin, with 47,399 people living within 3 miles of this site according to the U.S. Census Bureau; and
- PFAS 113,364 times the safe exposure level found at Dallas Navy base, near Dallas with 180,597 people living within 3 miles of this site according to the U.S. Census Bureau.

PFAS contamination in our water sources, therefore, is a significant concern and should be immediately addressed. We appreciate and support the Intended Use Plan for SFY 2023 to address emerging contaminants in Texas.

1. Streamline Rating Criterias 6-8 in order to eliminate redundancy and potential over-prioritization of small and rural projects

Up to three rating criteria prioritize rural or small systems. This includes the following criteria:

- 6. Disadvantaged Community or Small System – 30 points;
- 7. A rural project based on population – 10 points; and
- 8. System size based on connection – up to 15 points.

While we believe that prioritizing projects in small/rural systems is important, we believe that over prioritizing these communities could result in putting other communities that are unable to pay for projects addressing emerging contaminants at too great a disadvantage. Therefore, we recommend streamlining rating criterias 6 through 8. We propose two options to be able to achieve this, below.

**Option 1:**

For example, rating criteria #6, should only consider disadvantaged communities, then rating criteria #7 could consider rural projects based on population OR system size based on connection. This would look like the following:

- 6. Disadvantaged Community – 30 points; and
- 7. A rural project based on population OR small system based on number of people served or system size based on connections – 15 points.

## Option 2:

Alternatively, Rating criteria #7 could stay as is, and criteria #6 and #8 could be combined to look like the following:

- 6. Disadvantaged Community – 30 points;
- 7. A rural project based on population – 10 points; and
- 8. Small systems based on number of people served (fewer than 25,000 people) OR system size based on connection – up to 15 points.

While both of these options eliminate redundancies in prioritizing small systems, Option 2 gives points separately for both small and rural projects.

- II. Consider adding additional rating criteria aimed prioritizing projects in areas with large populations of persons under 18 years of age, distance from military bases, distance from fracking sites, and other vulnerable subpopulations

There are numerous subpopulations that are particularly vulnerable to PFAS exposure. The EPA has identified children, pregnant parents, and some industrial workers as particularly vulnerable subpopulations. While we are not aware of statewide data on the second two of these subpopulations, the ACS collects data on percent of persons under 18 years of age. We believe that prioritizing communities with large populations under 18 years of age will better target communities most at risk to PFAS exposure, and therefore those that will benefit most from the CWSRF Emerging Contaminant program.

Additionally, as noted above, distance from former and current military sites correlates with PFAS exposure, due to the use of firefighting foam on bases. We recommend adding a rating criteria for distance from military bases to address these areas of high exposure.

The TWDB should also consider rating projects based on distance from oil and gas drilling sites, as it has been reported that there is wide use of PFAS in oil and gas drilling.<sup>3</sup> Over the past decade, according to a report by the Physicians for Social Responsibility, oil and gas companies in Texas have pumped at least 43,000 pounds of the PFAS into more than 1,000 fracked oil and gas wells across the state.<sup>4</sup> Additional rating criteria aiming at prioritizing projects in other vulnerable communities should also be considered.

Thank you for the opportunity to submit these comments. We hope these recommendations provided above are taken into consideration and look forward to any future discussions with the TWDB.

<sup>3</sup> Texas Tribune, Thousands of pounds of “forever chemicals” have been injected into Texas oil and gas wells, study finds (March 27, 2023), available at:

<https://www.texastribune.org/2023/03/27/texas-fracking-oil-gas-wells-pfas-report/>.

<sup>4</sup> Dusty Horwitt, J.d., Barbara Gottlieb, and Gary Allison, Physicians for Social Responsibility, Oil and Gas Companies Used PFAS in Texas Wells; Extent of Use Obscured by Six Billion Pounds of “Trade Secret” Chemicals (February 2023). Available at: <https://psr.org/wp-content/uploads/2023/02/fracking-with-forever-chemicals-in-texas.pdf>.

**Response:**

The TWDB appreciates receiving the comments for the 2023 DWSRF Emerging Contaminants IUP.

*I. Streamline Rating Criterias 6-8 in order to eliminate redundancy and potential over-prioritization of small and rural projects* – The intent of the rating criteria regarding system size and rural classification is to prioritize projects serving communities that generally have fewer resources to address PFAs and other emerging contaminants, which is typically an expensive and complex process. The TWDB recognizes that small and rural systems are not the only systems that need to address these contaminants and need financial assistance to do so. Given the capacity of this current round of funding, projects for larger/urban systems should still be able to receive financial assistance from this program. As part of the planning process for future rounds of funding for this program, TWDB evaluates all rating criteria to ensure its effectiveness of meeting the goals of the program and the needs of Texas water systems.

*II. Consider adding additional rating criteria aimed prioritizing projects in areas with large populations of persons under 18 years of age, distance from military bases, distance from fracking sites, and other vulnerable subpopulations* – Thank you for this comment. When determining rating criteria, TWDB takes into consideration the ability of applicants to acquire the information needed to fill out the application and not make it so burdensome that some entities don't apply due to the resources needed to acquire that information. While some entities may already track this information and have it readily available, many entities do not, and require a significant amount of staff resources or expenses to get this information. As part of the planning process for future rounds of funding for this program, TWDB evaluates all rating criteria to ensure its effectiveness of meeting the goals of the program and the needs of Texas water systems.

**Change:**

None.





**Drinking Water State Revolving Fund**  
**Intended Use Plan**  
**Emerging Contaminants Funding**  
**SFY 2023**  
**(FFY 2022 Allotment)**

Effective Date: August 10, 2023

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Texas Water Development Board rules governing the Drinking Water State Revolving Fund program (Texas Administrative Code, Title 31, Part 10, Chapter 371) may be accessed online at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=31&pt=10&ch=371](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=31&pt=10&ch=371)

## Drinking Water State Revolving Fund Acronyms

<b>ACS</b>	American Community Survey
<b>AIS</b>	American Iron & Steel
<b>AMHI</b>	Annual Median Household Income
<b>BABA</b>	Build America, Buy America Act, 2021
<b>CWSRF</b>	Clean Water State Revolving Fund
<b>DWSRF</b>	Drinking Water State Revolving Fund
<b>EPA</b>	Environmental Protection Agency
<b>FFY</b>	Federal Fiscal Year
<b>FMT</b>	Financial, Managerial, and Technical
<b>IIJA</b>	Infrastructure Investment and Jobs Act, 2021
<b>IUP</b>	Intended Use Plan
<b>NEPA</b>	National Environmental Policy Act
<b>PIF</b>	Project Information Form
<b>PPL</b>	Project Priority List
<b>PWS</b>	Public Water System
<b>SDWA</b>	Safe Drinking Water Act
<b>SFY</b>	State Fiscal Year
<b>SRF</b>	State Revolving Fund
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TWDB</b>	Texas Water Development Board

## **I. Overview**

The Infrastructure Investment and Jobs Act, 2021, Pub. L. 117-58 (IIJA) appropriated capitalization grant funds for Federal Fiscal Years (FFY) 2022 to 2026 to reduce exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through drinking water and to help address discharges through wastewater and, potentially, nonpoint sources.

This Intended Use Plan (IUP) covers the DWSRF capitalization grant funds allocated to Texas from FFY 2022 appropriations in the amount of \$59,202,000, plus \$1,077,040 transferred from the CWSRF FFY 2022 appropriations, for a total of \$60,279,040. The appropriations require the entire amount allocated to project funding be provided as additional subsidization, which will be in the form of principal forgiveness. A total of \$57,910,960 is available for projects under this IUP as principal forgiveness. Per the IIJA, not less than 25% of the project funds must be provided to disadvantaged communities or public water systems serving fewer than 25,000 people.

For a project or activity to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and the primary purpose must be to address emerging contaminants in drinking water. The focus will be on projects addressing PFAS, however, the program may fund as a lower priority projects for any contaminant in any of the U.S. Environmental Protection Agency's (EPA) Contaminant Candidate Lists.

If EPA has promulgated a National Primary Drinking Water Regulation (NPDWR) for a contaminant, then a project whose primary purpose is to address that contaminant is not eligible for funding under this appropriation, with the exception of PFAS. For example, a project for which the primary purpose is to address arsenic or nitrate in drinking water is not eligible because arsenic and nitrate are regulated under the NPDWRs. (Note: A project to address arsenic or nitrate is eligible and prioritized under the TWDB's regular DWSRF program.)

EPA has indicated it expects to establish a NPDWR for a particular PFAS or a group of PFAS. PFAS-focused projects will be eligible for funding under this appropriation regardless of whether EPA has established a NPDWR for that particular PFAS or group of PFAS.

## **II. Background**

In 1996 Congress passed federal amendments to the SDWA that established the DWSRF program. The Texas Water Development Board (TWDB) is authorized by state law to administer this program for Texas.

The TWDB is the financing agency for the DWSRF and has a contractual relationship with the state's primacy agency, the Texas Commission on Environmental Quality (TCEQ), to perform DWSRF activities. TCEQ performs DWSRF activities that include rating proposed projects, state program management, small systems technical assistance, assessments for ground water sources, source water technical assistance, sanitary surveys, complaint

investigations, enforcement activities, disaster assistance, and implementation of the State of Texas approved Capacity Development Strategy.

The IIJA appropriated supplemental capitalization grant funds for Federal Fiscal Years (FFY) 2022 to 2026 for general activities, lead service line replacement, and emerging contaminants. The SFY 2023 IUP covering general activities using the FFY 2022 annual and IIJA appropriations was effective October 5, 2022. The draft IUP covering Lead Service Line Replacements is available for comment and proposed projects may be submitted through May 23, 2023.

### **III. Projects to Fund**

#### **A. Eligible Applicants**

Applicants eligible to apply for assistance are:

- Existing community Public Water Systems (PWSs) including political subdivisions, nonprofit water supply corporations and privately-owned community water systems
- Non-profit, non-community public water systems
- State agencies

#### **B. Eligible and Ineligible Use of Funds**

The primary purpose must be to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances (PFAS). Projects that address any contaminant listed on any of EPA's Contaminant Candidate Lists (CCL) are eligible. See EPA webpage for details on the drinking water contaminants on the CCL - <https://www.epa.gov/ccl>

1. Examples of eligible project costs include planning, acquisition, design, and construction of projects for:
  - Emerging contaminants costs associated with the construction of a new treatment facility or upgrade to an existing treatment facility that addresses emerging contaminants.
  - Development of a new source (i.e., new/replacement well or intake for a public water system) that addresses an emerging contaminant issue.
  - Consolidation with another water system that does not have emerging contaminants present or has removal capability.
  - Costs for planning and design and associated pre-project costs.
  - Infrastructure related to pilot testing for treatment alternatives.
  - Creation of a new community water system to address unsafe drinking water provided by individual (i.e., privately-owned) wells or surface water sources.

All projects funded through the DWSRF must be consistent with the most recently adopted TWDB State Water Plan.

2. Examples of ineligible project costs include:

- If the primary purpose is not to address emerging contaminants in drinking water.
- If the primary purpose is to address a contaminant that is regulated under EPA's National Primary Drinking Water Regulation, with the exception of PFAS in the future.

**IV. Amount Available**

**1. Allocations / Amount Available**

A total of \$57,910,960 is available for projects under this IUP, all in the form of principal forgiveness. No origination fees will be assessed.

**2. Allocation of Grant Funds, including Additional Subsidization:**

	<b>Emerging Contaminants</b>	% of Grant
<b>DWSRF FFY 2022 (SFY 2023) Allotment</b>	\$59,202,000	
less Set-aside - TWDB Administration (including Project Management System) *	\$2,368,080	4%
less Set-asides - Small Systems Technical Assistance, State Program Management, Local Assistance and Other State Programs	\$0	
<b>Total</b>	<b>\$56,833,920</b>	
Amount transferred from CWSRF Emerging Contaminants to DWSRF Emerging Contaminants	\$1,077,040	
<b>Total Principal Forgiveness Allocated to Projects</b>	<b>\$57,910,960</b>	
* Administration Set-aside based on original grant allotment of \$59,202,000 before transfer from CWSRF		

## V. Funding Options and Terms

**Equivalency projects (Federal Requirements)** - All projects will be considered equivalency projects, which must follow all federal requirements commonly known as “cross-cutters”. More information on the federal cross-cutters may be found in Appendix E.

### 1. Funding Options Available:

Entities listed on the Project Priority Lists (PPLs) may be invited to apply for one or more of the following funding options.

#### a. Disadvantaged Community or Small Systems Funding (Equivalency only)

An entity is considered an eligible disadvantaged community if it:

- 1) may have emerging contaminants,
- 2) 51 percent or more of the proposed project beneficiary area based on household connections has an Annual Median Household Income (AMHI) level that does not exceed 150 percent of the state’s AMHI level. The state AMHI from the U.S. Census 2017-2021 American Community Survey (ACS) 5-year estimate is \$67,321; therefore the AMHI of the proposed project beneficiary area must not exceed \$100,982, and
- 3) the unemployment rate for the project beneficiaries is greater than 50 percent of the state unemployment rate or the population has declined or the utility is a small system with 25,000 or fewer connections for the applicable utility service.

Small Systems is defined as public water systems serving fewer than 25,000 people.

This funding option offers 100 percent principal forgiveness.

#### b. Other emerging contaminant project funding (Equivalency only)

This funding is available to any eligible recipient. This funding option offers 100 percent principal forgiveness.

### 2. Federal Requirements on Available Funds

Funds are subject to federal requirements such as Davis-Bacon Act prevailing wages and Build America, Buy America. These DWSRF-funded projects must follow all federal “cross-cutter” requirements and EPA’s signage requirements. These requirements are outlined in Appendix E.

## VI. Goals

The primary goal of the Texas DWSRF program is to improve public health protection. In addition, the overall goals of the Texas DWSRF program are to identify and provide funding for maintaining and/or bringing Texas’ PWSs into compliance with the SDWA; to support affordable drinking water and sustainability; and to maintain the long-term financial health of



the DWSRF program fund. Goals specific to the emerging contaminants funding in this IUP are listed below.

#### **A. Short-Term Goals**

1. Fund eligible project proposals to address emerging contaminants up to the amount of funding available.
2. Prioritize proposals that have identified and will address perfluoroalkyl and polyfluoroalkyl substances (PFAS).
3. Prioritize project proposals that request construction funding.
4. Provide outreach to systems within Texas on the availability of this funding to address emerging contaminants.
5. The TWDB and TCEQ will collaborate on the deployment of these funds.

#### **B. Long-Term Goals**

1. Use the emerging contaminant grant funds provided to Texas to fund project proposals to address identified emerging contaminants projects eligible for assistance with an ongoing priority for addressing perfluoroalkyl and polyfluoroalkyl substances (PFAS).
2. To the extent eligible project proposals are received, use all the emerging contaminant funds allotted to Texas to improve public health and enhance the objectives of SDWA.
3. The TWDB and TCEQ will collaborate on the deployment of these funds in a manner that will provide the most benefit to public health and ensure compliance with the requirements of SDWA.

### **VII. Participating in the DWSRF Program**

#### Solicitation of Project information

Project information was solicited from eligible entities across the state using direct emails, notices posted on the TWDB website, and financial assistance workshops held throughout the State. Potential applicants submitted PIFs by the response deadline of in Appendix A.

The required information submitted on a PIF consisted of:

- A detailed description of the proposed project.
- A list of the emerging contaminants that the project will address (if emerging contaminants have been identified, applicant needs to provide documentation of the presence)
- A map(s) showing the location of the service area.

- An estimated total project cost that is certified by a registered professional engineer if project costs are greater than \$100,000.
- A checklist and schedule of milestones to determine a project's readiness to proceed to construction.
- Information necessary to rank the project:
  - (a) Whether there are identified perfluoroalkyl and polyfluoroalkyl substances (PFAS) that will be addressed by the proposed project
  - (b) Whether there are other identified emerging contaminants on any of EPA's Contaminant Candidate Lists (CCLs) that will be addressed by the proposed project.
  - (c) Whether there is any proposed monitoring for the specific purpose of project development (planning, design, and construction). Note - regular operations & maintenance monitoring is ineligible.
  - (d) Whether the proposed project requests funds for the construction phase.
  - (e) Whether the project will provide first-time service to connections currently unserved by a public water system that have found emerging contaminants in their current source of water
  - (f) Whether the project will facilitate consolidation of one or more water systems that have identified a presence of emerging contaminants into another water system that does not have emerging contaminants or has removal capability
  - (g) Project beneficiary area's Annual Median Household Income (and if seeking disadvantaged community status, all the required information).
  - (h) Project beneficiary area's unemployment rate
  - (i) Project beneficiary area's population change percentage
  - (j) System size – number of connections and people served.
- Signature of the applicant's authorized representative.
- Additional information detailed within the solicitation for projects as needed to establish the priority rating.

Any survey being used for income determination must be completed within five years of the date the TWDB receives the PIF.

#### **A. Evaluation of the Project Information Received and Priority Rating System**

All PIFs will receive a review by TWDB staff. The scores are based on information received by any established PIF deadline. Throughout the evaluation process, entities will be contacted by staff if additional information was needed.

#### **B. Ranking and Creation of the Project Priority List**

Each project submitted by the initial deadline and determined to be eligible is ranked from highest to lowest by the combined rating factors and included on the PPL. In the event of ties in the rating, priority is given to the project serving the fewest connections.

Project information submitted after the PIF deadline is not considered for rating purposes prior to adoption of the initial PPL. Following approval of the IUP, changes to a ranked project that result in a project no longer addressing the issues for which it was rated will require the project to be re-rated and re-ranked. Changes in the project that do not trigger re-rating and re-raking are:

1. The applicant for a proposed project changes but the project does not change;
2. The number of participants in a consolidation project changes and the change does not result in a change to the combined rating factor; and
3. The fundable amount of a proposed project does not increase by more than 10 percent of the amount listed in the approved IUP. The Executive Administrator may waive the 10 percent limit to incorporate additional elements to the project; however, any Additional Subsidization awarded may not exceed the original IUP amount's allocation.

Based on a review of readiness to proceed to construction, the TWDB determined which phases would be eligible to receive funding. The phases indicated on the TWDB invitation represent the phases deemed eligible based on that review.

### **C. Bypassing Projects**

The TWDB's Executive Administrator may decide to bypass, or skip, higher ranked projects in favor of lower ranked projects to ensure that funds available are utilized in a timely manner, that statutory and capitalization grant requirements are met, including the 25 percent requirement for disadvantaged communities or small systems. In addition, if an entity is offered funding for any project that has an interrelated project ranked lower on the list, the Executive Administrator has discretion to also offer funding for the interrelated project. Reasons for bypassing projects are discussed in Appendix F.

### **D. Phases for Invited Projects**

#### **1. Pre-Design Funding Option (or Planning, Acquisition, Design and Construction Funding)**

The pre-design funding option allows an applicant to receive a single commitment for all phases of a project. The construction portion of the project must be deemed ready to proceed before funds for the construction phase will be released.

#### **2. Construction Funding Only**

Projects that were determined to be ready to proceed to construction based on the current status of their planning, acquisition, and design activities.

#### **3. Planning, Acquisition, and Design**

A project that was not deemed ready to proceed to construction may receive an invitation to fund only the Planning, Acquisition, and/or Design portion of the project.

#### **4. Viability and Feasibility of Projects**

A project must demonstrate to the TWDB that it is viable, feasible, and sustainable prior to being invited to submit an application and prior to receiving a commitment for any funding option, including additional subsidization/principal forgiveness, for the acquisition, design or construction phases of the project. A project may receive funds for the planning phase to assess the viability and feasibility of a project, including funds to prepare an asset management plan.

#### **E. Invitations and Application Submissions**

The TWDB will invite certain entities on the PPL to submit an application for the project phases shown on the list using the available funding options. An entity on the list may not submit an application until it receives an invitation from TWDB. TWDB will consider the need to meet the minimum federal additional subsidization requirements when deciding whether it needs to bypass projects on the PPL.

##### Intent to Apply

As part of the invitation process the TWDB may require the applicant to submit an intent to apply form or information by a specified deadline showing the applicant's intent to request up to the eligible amount of funding in the IUP. Failure to submit the requested intent to apply information by the established deadline will result in TWDB bypassing the project on the IUP list.

Prior to submitting an application, entities are required to participate in a pre-application meeting to discuss the application process and project requirements. Invited applications from projects on the PPL that are received during the initial invitation round after Board approval of the IUP will be allotted available Additional Subsidization (principal forgiveness) based on rank order. All projects must be determined administratively complete as submitted or within 14 days from the date the applicant receives a notice to correct deficiencies or any Additional Subsidization may be reallocated on a first-come, first-served basis.

Each application received by the TWDB will be reviewed to ensure that the required milestones have been met to allow funding of the phase(s) being requested. If the application review determines that a project is not ready to proceed for funding for the phase(s) being requested, the project may be bypassed for any additional subsidy amounts or receive limited phases of funding.

Projects may be bypassed if an applicant fails to timely submit a complete application or additional requested information.

##### Deadline for Receipt of Invitation

The TWDB will establish a deadline for receipt of the application. If the application is not received by the established deadline, the project will be bypassed.

## Subsequent Invitations

TWDB may invite additional projects to submit if any funds remain unallocated after an initial invitation. Applicants may submit a PIF at any time for a project to be considered for inclusion on the amended PPL. The new projects will be considered after those on the original PPL list have been invited. Amendments to the project lists will undergo a 14-day public review period that will be advertised on the agency website.

### **F. Addressing Any Water Loss Mitigation within the Application**

If an applicant that is a retail public utility providing potable water has a water loss that meets or exceeds the threshold for that utility in accordance with §358.6 of Title 31, Part 10, Texas Administrative Code, the retail public utility must use a portion of any financial assistance received from the DWSRF, or any additional financial assistance provided by the TWDB, to mitigate the utility's water loss. However, at the request of a retail public utility, the TWDB may waive this requirement if the TWDB finds that the utility is satisfactorily addressing the utility's system water loss. Mitigation, if necessary, will be in a manner determined by the retail public utility and the TWDB's Executive Administrator in conjunction with the project proposed by the utility and funded by TWDB.

### **G. Self-Certification for Certain Systems Serving 500 or Fewer Persons**

The Water Infrastructure Improvements for the Nation Act (Public Law 114-322) requires DWSRF assistance recipients serving 500 or fewer persons to consider publicly-owned wells (individual, shared or community) as an option for their drinking water supply. Any applicable project involving the construction, replacement or rehabilitation of a drinking water system which is not already using a publicly-owned well for the source are required to self-certify. If the community already uses a publicly-owned well (including a privately-owned well for a public water system) and the project does not involve a new water source, then the self-certification is not needed. The self-certification is only for projects which do not involve a publicly-owned well source to ensure that this was one of the water supply options considered but not selected as the best alternative.

### **H. Closing Deadlines**

All commitments must close within six months from the date of the commitment. In extenuating circumstances, the Board may grant extensions of time to close if an applicant demonstrates sufficient reason for a delay. The TWDB may extend these closing deadlines if necessary to conform to the closing schedule for concurrent financing for the project from another TWDB financing program.

<b>Type of Financial Assistance</b>	<b>Closing Deadline</b>
All commitments	6 months

## **I. Limits**

### **1. Proportionate Share/Capacity**

The TWDB may limit the amount of total funding available to an individual entity or project based on a proportionate share of total funds available.

### **2. Additional Project Funding Before Closing**

The total project costs may be increased if the entity shows that additional funds are necessary to implement the project.

## **J. Transfer of Funds**

Similar to the regular/base grants, the TWDB may transfer IIJA funds between the DWSRF emerging contaminants account and the CWSRF emerging contaminants account, or vice versa, in an amount up to thirty-three percent (33 percent) of the DWSRF IIJA emerging contaminants grant amount, or \$19,536,660. Based on limited demand for CWSRF emerging contaminant FFY 2022 funding, TWDB is transferring \$1,077,040 as in-kind funds from the CWSRF emerging contaminant account to the DWSRF emerging contaminants account and reserving authority for transferring the additional authority in the future.

## **K. Updates to the Intended Use Plan**

Substantive changes to the IUP may be made through an amendment after a 14-day public review and comment period. Non-substantive changes may be made by the TWDB without public notification.

## **VIII. Set-Asides**

Federal regulations allow states to set aside up to 31 percent of the capitalization grant funds for purposes other than financing construction projects for water systems. The set asides for the FFY 2022 capitalization grant for emerging contaminants will be allocated as shown below.

### **A. Texas Water Development Board Administration and Technical Assistance Activities**

The SDWA allows a state to set aside funds to cover the reasonable costs of administering the DWSRF and to provide technical assistance to public water systems. The amount that may be taken for these purposes is the amount of any fees collected by the State, regardless of the source; and the greatest of (1) \$400,000, (2) one-fifth of one percent of the current valuation of the DWSRF (both loan and set-asides), and (3) an amount equal to four percent of all grant awards to the DWSRF for the particular fiscal year.

The TWDB will draw administrative and technical assistance set-asides from the FFY 2022 Capitalization Grant in the amount of \$2,368,080. This amount is based on the option of using four percent of the original FFY 2022 DWSRF capitalization grant allotment. These funds will be used for allowable expenses such as reporting activities, payment processing, application assistance, project development and monitoring, and technical assistance to public water systems.

Federal regulations governing the DWSRF program permit a state to reserve its authority to take an amount equal to 4 percent of the current year's grants from a future grant to defray the cost of administering the program. The TWDB, as it has done since SFY 1998, is reserving that authority.

#### **B. Coordination of Activities with the Texas Commission on Environmental Quality**

The TWDB and TCEQ regularly communicate to discuss projects in need of financial assistance through the DWSRF program. The two agencies hold periodic DWSRF coordination meeting and TCEQ staff attend many of TWDB's pre-application meetings and financial assistance workshops.

### **IX. Financial Status**

The TWDB will comply with the requirements associated with the FFY 2022 allotments under this SFY 2023 IUP.

#### **A. State Match**

No state match is required for the emerging contaminant grant funds.

#### **B. Binding Commitment Requirement**

The TWDB will enter into binding commitments with entities during SFY 2023 that total the amount of a FFY 2022 grant payment allocated to projects within one year after the receipt of the grant payment. A binding commitment occurs when the TWDB's Board adopts a resolution to commit funds to a project.

#### **C. Leveraging**

The DWSRF program will be leveraged as necessary to provide funds to meet the needs of public water systems in the state. The TWDB does not anticipate leveraging the emerging contaminant grant funds at this time.

#### **D. Cross-collateralization**

On March 1, 2018, the TWDB has cross-collateralized the CWSRF and the DWSRF as a source of revenue and security for the payment of the principal and interest on bonds for the DWSRF and CWSRF programs. State authority is provided under Section 15.6042 of the Texas Water Code. The TWDB has received a certification from the state Attorney General that state law permits the TWDB to cross-collateralize the assets of the CWSRF and the DWSRF. Cross-collateralization of the CWSRF and DWSRF will

enhance the ability of the DWSRF to leverage its funds and increase its lending capacity without detriment to either of the SRF programs.

1. Summary of the cross-collateralization structure:
  - a. The type of moneys which will be used as security – Pledged Political Subdivision Bonds and certain other funds included in the Master Resolution (program account, portfolio account, and revenue account) will secure the bonds.
  - b. How moneys will be used in the event of a default - In the cross-collateralized scenario, Political Subdivision Bonds from the non-defaulting program will be used to cover the debt service delinquency on the defaulting program. If, for any reason, insufficient Political Subdivision Bonds exist in both programs, then program equity will be utilized.
  - c. Whether or not moneys used for a default in the other program will be repaid; and, if it will not be repaid, what will be the cumulative impact on the funds. While a decision to repay or not repay would be made at the time of default, the TWDB would either require repayment when funds are available or transfer repayment funds.
2. Proportionality – The proceeds generated by the issuance of bonds will be allocated to the purposes of the CWSRF and the DWSRF in the same proportion as the assets from the two funds that are used as security for the bonds.
3. State Match – In accordance with Texas Water Code §§ 17.853(c)(1) and 17.859, the TWDB intends to provide state match through the issuance of one or more revenue bonds in a program series that will fund the two SRF programs.

Supplemental bond resolutions for the issuance of each series will provide detail on what specific money is pledged as security for each program (CWSRF or DWSRF) within the series. As required, the CWSRF and DWSRF will continue to be operated separately. The cash flows for the DWSRF program and the CWSRF program will be accounted for separately. Repayments on loans in the CWSRF program will be paid to the CWSRF and repayments on loans made in the DWSRF program will be paid to the DWSRF.

Similar to other states' financing methods where state match is not provided by appropriation and is instead generated through debt issuance, the TWDB cross-collateralization structure allows the TWDB to retire bonds for the State Match with interest earnings payments only, not principal, earned from each SRF in accordance with 40 CFR § 35.3550(g)(3).

#### **E. Method of Cash Draw**

There is no state match and EPA has revised its cash draw policy as described in "Class Exception from the Clean Water and Drinking Water State Revolving Fund Cash Draw Rules", dated November 18, 2022. Therefore, TWDB will draw federal funds using acceptable evidence of expenditures.



## **F. Long-Term Financial Health of the Fund**

The long-term financial health of the DWSRF is monitored through ongoing cash flow and capacity modeling. The TWDB lending rate policy has been established to preserve the corpus of the capitalization grants and state match funds, excluding the amount of additional subsidization, set-aside amounts from each grant, and net transfers. The TWDB will continue to manage the DWSRF to ensure funds will be available in perpetuity for activities under the SDWA.

## **G. Fees**

No origination fee will be assessed on project financing.

## **H. EPA Program Evaluation Report and Audit**

EPA has conducted an annual program review of the DWSRF program for SFY 2022 and will send their final report to TWDB upon completion.

The Texas State Auditor's Office published the results of the SFY 2022 Single Audit of the DWSRF on February 27, 2023 (Report 23-315). There were no findings as a result of the review.

## **X. Navigating the Lists**

Appendices G – J are a series of lists that detail the proposed project information of each project based upon the PIFs received.

- **Appendix G** - The alphabetical list is the PPL sorted alphabetically. It contains the project information; the name of the applying entity, their total number of points and associated priority order rank, the system's PWS ID number, the total population based on TCEQ data, a detailed description of the proposed project, all project phases requested by the entity, and total project cost. A grand total for all of the projects is listed on the last page of the appendix.
- **Appendix H** – Projects that were deemed ineligible to receive DWSRF funding with a brief description as to why they were deemed ineligible.
- **Appendix I** – Projects that were deemed ineligible to receive disadvantaged funding with a brief description as to why they were deemed ineligible. The project may still be eligible to receive other funding options.
- **Appendix J** – Lists projects in order of highest priority to receive funding. The content is the same as the alphabetical list in Appendix G.

## **Appendix A. Public Review and Comment**

### **Public Participation in the Development of the Intended Use Plan**

Public participation is an important and required component of the IUP development process. The TWDB takes seriously its responsibility in administering these funds and considers public input necessary and beneficial.

#### **A. Notice**

To seek public comment, the draft IUP including the Project Priority List was made available until July 17, 2023. The draft FFY 2022/SFY 2023 DWSRF Emerging Contaminants IUP was announced as follows:

- Public notification of the draft IUP and the public comment period was posted on the TWDB website at [www.twdb.texas.gov](http://www.twdb.texas.gov).
- A copy of the draft IUP was sent to EPA after published.

#### **B. Comment**

Comments were accepted via the following three options from June 29, until midnight on July 17, 2023.

1. Attending a public hearing on July 17, 2023, at 9:30 A.M. at the Stephen F. Austin State Office Building, Room 170, in Austin, Texas.
2. Emailing comments to the following electronic mail address and specifying in the subject line "*DWSRF Emerging Contaminants comments*".

[DWSRF@twdb.texas.gov](mailto:DWSRF@twdb.texas.gov).

3. Mailing comments to the following postal mail address:

Mr. Mark Wyatt  
Director, Program Administration and Reporting  
Texas Water Development Board  
P.O. Box 13231  
Austin, TX 78711-3231

#### **C. Effective Date**

The FFY 2022/SFY 2023 DWSRF Emerging Contaminants IUP is considered final on the effective date.

#### **D. Documentation**

The final entire IUP, including project lists, was formally submitted to the EPA and posted on the TWDB website.

**Appendix B. Projected Sources and Uses of Funds**  
(As of April 1, 2023)

**SOURCES:**

FFY 2022 Federal Capitalization Grant	\$59,202,000
Transferred CWSRF FFY 2022 Federal Capitalization Grant funds	\$1,077,040
<b>TOTAL SOURCES:</b>	<b>\$60,279,040</b>

**USES:**

<u>Set-Asides from FFY 2022 Grant</u>	
TWDB Administrative Set-Aside	\$2,368,080
Total TWDB Set-Aside:	\$2,368,080
TCEQ Small Systems Technical Assistance Program Set-Aside	\$0
TCEQ Texas State Management Program Set-Aside	\$0
TCEQ Local Assistance and Other State Programs Set-Aside	\$0
Total TCEQ Set-Asides	\$0
<u>Projects to be Funded:</u>	
SFY 2023 IUP Commitments – Principal Forgiveness	\$57,910,960
Total Projects To Be Funded - SFY 2023:	\$57,910,960
<b>TOTAL USES:</b>	<b>\$60,279,040</b>
<b>NET SOURCES (USES):</b>	<b>\$0</b>

## Appendix C. Rating Criteria

1. Identified perfluoroalkyl and polyfluoroalkyl substances (PFAS) (Highest priority) and requested construction costs – 200 points (Highest priority) or
2. Identified emerging contaminants other than PFAS and requested construction costs – 100 points or
3. Proposals to identify emerging contaminants and/or requesting only planning and design and associated pre-project costs for any eligible purpose, without requesting the associated construction costs – 10 points

Plus the following:

4. Proposal will project provide first-time service to connections currently unserved by a public water system that have found emerging contaminants in their current water source – 15 points
5. Proposal will facilitate consolidation of one or more water systems into another water system that does not have emerging contaminants present or has removal capability – 15 points
6. Disadvantaged Community or Small System – 30 points  
Disadvantaged community is defined in Appendix D.  
A small system for the purpose of this IUP is a public water system serving fewer than 25,000 people
7. A rural project is one that fits any of the following – 10 points:
  - i. An entity that provides services predominately in a rural area. Using the U.S. Bureau of the Census 2010 decennial census definitions of a rural area, not more than 20 percent of the residential service connections are in urbanized areas and not more than 50 percent are in urban clusters according to the most recent data available to TWDB. The calculation will be based on the utility service(s) associated with the proposed project;
  - ii. A project from a political subdivision with a population of 10,000 or less and located outside the extraterritorial jurisdiction of a city with a population of 500,000 or greater; or
  - iii. A project in a county in which no urban political subdivision exceeds 50,000 in population based upon the most current data available from the U.S. Bureau of the Census or TWDB-approved projections.
8. System size  
Applicant entity serves under 1,000 connections – 15 points  
Applicant entity serves between 1,000 and 10,000 connections – 10 points  
Applicant entity serves between 10,000 and 25,000 connections – 5 points  
Applicant entity serves over 25,000 connections but fewer than 50,000 connections – 2 points

Tie Breaker

Rating factors will be ranked in descending order with priority given to the entity serving the fewest connections first.

## Appendix D. Criteria to Determine Disadvantaged Community Eligibility

An entity is considered an eligible disadvantaged community if it:

- 1) may have emerging contaminants,
- 2) 51 percent or more of the proposed project beneficiary area based on household connections has an Annual Median Household Income (AMHI) level that does not exceed 150 percent of the state's AMHI level. The state AMHI from the U.S. Census 2017-2021 American Community Survey (ACS) 5-year estimate is \$67,321; therefore the AMHI of the proposed project beneficiary area must not exceed \$100,982, and
- 3) the unemployment rate for the project beneficiaries is greater than 50 percent of the state unemployment rate or the population has declined or the utility is a small system with 25,000 or fewer connections for the applicable utility service.

### Acceptable Source of Socioeconomic Data for FFY 2022

For this IUP, the TWDB will utilize:

- (1) U.S. Census 2017-2021 ACS 5-year estimates. An Excel spreadsheet containing this data is located here:

<https://www.twdb.texas.gov/financial/instructions/doc/ACS-data-for-SFY2024.xlsx>

Entities may also access their U.S. Census 2017-2021 ACS 5-year estimate data directly from the U.S. Census webpage. Census Data Search guidance (WRD-284) is available on the TWDB website at: <http://www.twdb.texas.gov/financial/instructions/doc/WRD-284.docx>

OR

- (2) Data from a socioeconomic survey approved by the Executive Administrator of a statistically acceptable sampling of customers in the service area completed in accordance with the most current Socioeconomic Surveys Guidelines (WRD-285) posted on the TWDB website. Any survey being used for income determination must be conducted within five years prior to the date the TWDB receives the PIF. An entity must submit documentation that substantiates the inadequate or absent Census data that led to the need to conduct a survey. **All entities must obtain prior approval to use survey data instead of the most recently available ACS data.**

In instances where the ACS data does not adequately reflect an entity's service area (e.g. an entity serves a community outside of its Certificate of Convenience and Necessity, an entity serves another system, the entity is a system without a Census Bureau defined boundary, etc.), a prorated analysis of ACS block group data will be performed to calculate the AMHI. Systems owned and operated by a public school or school district will be evaluated for their annual median household income for their school district boundary.

If recent reliable data is unavailable for the school district to determine the AMHI, the TWDB will use information from the Texas Education Agency's Title I, Part A program to determine income

eligibility. If more than 50 percent of the school districts campuses are eligible for the program, the district's AMHI will be assumed to be eligible.

### **Methodology - Disadvantaged Community Eligibility Calculation**

City/Place, Census Tract and Block Group geographical U.S. Census geographical areas or an eligible income survey may be used for the AMHI, unemployment rate and population change calculations.

The methods below should be used to find the AMHI for the project beneficiary area. When finding the AMHI for the census geographic areas, applicants should also make note of the unemployment percentages and population change, as the same method and data source used for the AMHI calculation method below will be used for the unemployment rate and change in population. If an income survey is used, TWDB will use the most appropriate geographical area that represents the proposed project beneficiaries for determining the unemployment rate and change in population.

#### **First method, easiest method to employ:**

To lessen the burden on applicants who can meet the requirement without considering the 51% level, the TWDB will make the presumption that the average (mean) of the AMHI of all U.S. Census Bureau Cities/Places, Block Groups and/or Census Tracts containing any portion of the project service area is the AMHI for the project. Applicants must provide a list of all of the Cities/Places, Block Groups and/or Census Tracts containing any portion of the project service area, the AMHI for each City/Place, Block Group and/or Census Tract, and a detailed map of the proposed service area to be considered for using the presumptive approach in establishing the project's AMHI. TWDB will use the project area map to verify the associated Cities/Places, Block Groups and/or Census Tracts submitted. The Executive Administrator will then determine whether this option is a reasonable estimate of the AMHI for the project service area and may be used for the AMHI threshold calculation.

#### **Second method, if first method does not meet the 150 percent threshold:**

Any applicant that does not meet the 150 percent threshold by using the average (mean) of the U.S. Census Bureau Block Groups and/or Census Tracts containing any portion of the project service area may submit the actual number of household connections in each Block Group and/Census Tract and calculate the weighted average AMHI for the project service area.

#### **Third method, if necessary to meet the 150 percent threshold:**

Finally, if the AMHI of the applicant's project service area does not fall within 150 percent of the state AMHI threshold without consideration of the 51 percent calculation, the applicant would need to provide the number of household connections in each U.S. Census Bureau's geographical area that is used in the calculation.

**Alternatively**, as with general program activities, the entity may conduct an income survey for determining the applicable AMHI. Any survey being used for income determination must be completed within five years of prior to the date the TWDB receives the PIF.

## **Appendix E. Federal Requirements and Assurances**

### **A. Federal Requirements**

#### **1. Build America, Buy America Act, 2021**

The requirements of the Build America, Buy America Act, 2021 (P.L. 117-58), known as BABA, will apply to all projects funded for emerging contaminants. Additional information on BABA is available on the TWDB website at:

<http://www.twdb.texas.gov/financial/programs/BABA/index.asp>

An additional source of information on BABA is Information on EPA's [website](#).

#### **2. Davis-Bacon Wage Rate Requirements**

A subrecipient must comply with the requirements of section 1452(a)(5) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(5)) in all procurement contracts and must require contractors to include compliance with section 1452(a)(5) of the Safe Drinking Water Act in all subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction project must contain in full in any contract in excess of \$2,000 the wage rate requirements contract clauses prescribed by TWDB. Section 1452(a)(5) requires compliance with 40 U.S. Code Sections 3141 to 3144, 3146, and 3147 covering wage rate requirements. TWDB guidance is available at

<http://www.twdb.texas.gov/financial/instructions/doc/DB-0156.pdf>.

#### **3. American Iron and Steel (AIS)**

The TWDB and all DWSRF financial assistance recipients will comply with the American Iron and Steel (AIS) requirement in applicable federal law, including federal appropriation acts. Federal law requires DWSRF assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works.

The term "iron and steel products" means the following products made primarily of iron or steel:

- lined or unlined pipes and fittings
- manhole covers and other municipal castings
- hydrants
- tanks
- flanges, pipe clamps and restraints
- valves
- structural steel
- reinforced precast concrete
- construction materials

EPA may waive the AIS requirement under certain circumstances.

Furthermore, if the original financial assistance agreement for the planning and/or design of a project closed prior to January 17, 2014, then the AIS provision would not apply to the



construction phase of the same project. TWDB guidance is available at <http://www.twdb.texas.gov/financial/instructions/doc/TWDB-1106.docx>.

#### **4. Environmental Reviews**

The NEPA-like environmental review requirements are specified in Texas Administrative Code, Title 31, Part 10, Chapter 371. The NEPA-like environmental review in Texas Administrative Code, Title 31, Part 10, Chapter 371, applies to all DWSRF emerging contaminant projects.

#### **5. Generally Accepted Accounting Principles**

Assistance recipients must maintain project accounts according to Generally Accepted Accounting Principles as issued by the Governmental Accounting Standards Board, including standards relating to the reporting of infrastructure assets.

#### **6. Compliance with Cross-cutting Authorities**

There are a number of federal laws, executive orders, and federal policies that apply to projects and activities receiving federal financial assistance, regardless of whether the federal laws authorizing the assistance make them applicable. These federal authorities are referred to as cross-cutting authorities or cross-cutters. All cross-cutters apply to Equivalency projects, which is all emerging contaminant projects.

The cross-cutters can be divided into three groups: environmental; social policies; and, economic and miscellaneous authorities.

- Environmental cross-cutters include federal laws and executive orders that relate to preservation of historical and archaeological sites, endangered species, wetlands, agricultural land, etc. This cross-cutter requirement includes a National Environmental Policy Act (NEPA) compliant environmental review, which applies to these projects. When conducting the NEPA-like review the TWDB will inform EPA when consultation or coordination by EPA with other federal agencies is necessary to resolve issues regarding compliance with applicable federal authorities.
- Social policy cross-cutters include requirements such as minority and women's business enterprise participation goals, equal opportunity employment goals, and nondiscrimination laws. This cross-cutter requirement includes compliance with the EPA's Disadvantaged Business Enterprise program administered by TWDB.
- Economic cross-cutters directly regulate the expenditure of federal funds such as the prohibition against entering into contracts with debarred or suspended firms.

The Equivalency projects that are considered federal are those entered into the Federal Funding Accountability and Transparency Act Subaward Reporting System.

## **7. Financial, Managerial, and Technical (FMT) Capacity**

Prior to receiving or closing a commitment, the TCEQ will conduct a review of each applicant's FMT capacity. All applicants must receive FMT approval before closing on financial assistance funding.

## **8. Competency Statements**

The following competency statements are provided to satisfy the EPA's policy entitled "Policy to Assure Competency of Organizations Generating Environmental Measurement Data under Agency Funded Assistance Agreements."

### **A. TWDB Competency Statement**

TWDB ascertains that competency can be demonstrated by the following:

1. The "TWDB Quality Management Plan," was approved by EPA Region 6 on August 9, 2022. The plan demonstrates competency by providing a description of the quality policies including all requirements described in EPA QA/R-2.

### **B. TCEQ Competency Statement**

TCEQ ascertains that competency can be demonstrated by the following:

1. EPA approval of the "Quality Assurance Project Plan for the Public Water Supply Supervision Program Relating to the Safe Drinking Water Act of the Texas Commission on Environmental Quality", Revision 14, (QTRAK #23-033), approved by EPA on November 10, 2022, which is approved through November 10, 2025.
2. The "TCEQ Quality Management Plan, Revision 28 (2023)" (QTRAK# 23-0061) approved on December 8, 2022 by EPA Region 6 which demonstrates competency by providing a description of the quality policies including all requirements described in EPA QA/R-2.

## **9. Compliance with Capacity Development Authority, Capacity Development Strategy and Operator Certification Program**

A. Capacity development authority. The State of Texas, through the TCEQ, has the legal authority to ensure that all new community water systems, and new nontransient, noncommunity water systems that commence operations have demonstrated FMT capacity with respect to national primary drinking water regulations. If DWSRF financial assistance is being provided to the new system, TCEQ conducts and provides to TWDB the results of its FMT assessment prior to closing on the financial assistance.

B. Capacity development strategy. The State of Texas, through the use of DWSRF set-asides provided to TCEQ, implements a strategy to assist public water systems in acquiring and maintaining financial, managerial, and technical capacity. The TWDB has set aside funds from the regular/base program FFY 2022 grant for TCEQ to implement a capacity development strategy. TCEQ will use funds from the State

Program Management, Small Systems Technical Assistance, and Local Assistance and Other State Programs set-asides to conduct the capacity development activities. The TCEQ demonstrates compliance with the Capacity Development Strategy requirement of the SDWA by annually submitting the Capacity Development Report to EPA. The most recent report was provided to EPA on November 21, 2022. The TCEQ submitted the TCEQ Triennial Progress Report to the Governor on the Public Water Supply Capacity Development Program on September 30, 2020 as required by SDWA Section 1420(c)(3).

C. Operator certification program. The State of Texas, through the TCEQ, has a program for certifying operators of community and nontransient, noncommunity public water systems. The TCEQ demonstrates compliance with the Operator Certification Program Provisions by annually submitting an Operator Certifications Program Report to EPA. The most recent report was provided to EPA on September 12, 2022.

## **10. Signage**

DWSRF emerging contaminants projects must comply with applicable EPA signage requirements.

## **B. Assurances**

### **Entry into the Federal Reporting Systems**

The TWDB will enter information into EPA's DWSRF Reporting System, the DWSRF National Information Management System, and the Federal Funding Accountability and Transparency Act Sub-Award Reporting System as required.

## **Appendix F. Bypass Procedures**

The Executive Administrator may decide to bypass, or skip, higher ranked projects in favor of lower ranked projects to ensure that funds available are utilized in a timely manner and that statutory and capitalization grant requirements are met. If an entity is offered funding for any project that has an interrelated project ranked lower on the list, the TWDB Executive Administrator will have discretion to also offer funding for the interrelated project.

Reasons for bypassing projects are listed below, but are not limited to:

### **1. Fulfill the Minimum Additional Subsidization Requirement**

A project on the PPL or IIPL may be bypassed to fulfill the federal minimum additional subsidization requirement or to make commitments of the amount of funds that remain unallocated.

### **2. Intent to Apply and Application Submission Deadlines**

A project may be bypassed if the applicant did not submit any intent to apply form or information by a specified deadline or the application is not received by the TWDB-established submission deadline and it is not administratively complete by the established deadline.

### **3. Disadvantaged Community or Small Systems**

In the event that there are not enough projects with completed applications eligible to receive Disadvantaged Community or Small Systems funding to meet required 25 percent requirement, the Executive Administrator may bypass other projects to invite additional projects that are eligible for additional subsidization.

### **4. Readiness to Proceed**

The Executive Administrator may bypass projects to include those deemed ready to proceed to construction.

### **5. Past Project Performance**

If the applicant has failed to close a commitment or complete a project in a timely manner under a prior IUP, and it is determined that such failure to perform could jeopardize the timely use of funds for a project under this IUP, the Executive Administrator may bypass the project.

### **6. Financial Capacity**

A project may be bypassed if the Executive Administrator determines that the applicant will be unable to repay the SRF financial assistance for the project or does not have acceptable financial records or audits.

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**Appendix G. Project Priority List - Alphabetical**

Rank	Points	Entity	PWS ID	Population	Project Description	Requested Phase(s)	Total Project Cost
12	40	Arlington	TX2200001	394,266	The proposed project includes the source water monitoring, bench and pilot-scale testing, and conceptual design for PFAS treatment to address a known occurrence of PFAS compounds present in the City of Arlington's source water. The City intends to hire a third-party to develop a testing plan, and operate and maintain a pilot-scale plant using the existing pilot plant at its John F. Kubala Water Treatment Plant (JK WTP) to study the feasibility of using a GAC treatment strategy for PFAS removal. The City would then work with a third-party to develop a conceptual design.	PD	\$3,505,000.00
7	50	Bridge City	TX1810001	9,500	The purpose of this project is to provide a new nanofiltration system to remove organic carbon from the raw water before chlorination. The project will also provide new piping, concrete foundations, filter cover, ground storage tank, pumping, controls, and modifications necessary to bring the Romero Water Well back into production. Romero Water Well was abandoned due to high levels of trihalomethanes (THM) in their finished drinking water. THM is considered a disinfection by product that results from chlorinating raw water high in organic carbons.	PDC	\$4,792,450.00
1	155	Bronte	TX0410001	1,110	The City is proposing to construct a new micro or ultra-filtration water treatment plant to replace the existing facility. Lab testing has identified a lithium level of 64.5 µg/L which is greater than the 9 µg/L minimum reporting level described in the EPA 5th Unregulated Contaminant Monitoring Rule (UCMR 5).	PADC	\$15,000,000.00
11	40	Canyon Regional Water Authority		267,352	CRWA will be performing bench scale and pilot testing for PFAS removal at their Lake Dunlap Water Treatment Plant (LDWTP). This testing will be included in the planned Ozone feasibility study project. The testing will include two treatment technologies. The first technology will use the existing Nano filtration to remove PFAS and use Surface-Active Foam Fractionation (SAFF) for PFAS concentrated waste stream. The second technology will use existing advanced treatment with Ozone by adding ferric oxide and persulfate as a catalyst to remove PFAS from drinking water. However, the use of ferric oxide and persulfate with ozone will be evaluated carefully as this process will depend on the PFAS compounds present, pH of water, and other specific chemical characteristics of the water. This improvement will prepare CRWA for future PFAS regulation. The study will ensure that the CRWA is equipped to meet the new regulations and provide safe drinking water to its customers.	P	\$2,187,000.00
9	40	Corpus Christi	TX1780003	318,168	It has been proposed to add a third treatment train to the existing treatment facility to provide redundancy, and to improve treatment methods that can ensure compliance with the upcoming EPA proposed National Primary Drinking Water regulations on per- and polyfluoroalkyl substances (PFAS). Preliminary analysis will be conducted with bench scale and pilot testing to determine the most efficient and effective method of PFAS removal for the source water utilized to serve over 500,000 residents. Following the pilot study, design and construction of a full-scale treatment system that encompasses PFAS removal will be completed.	P	\$1,875,000.00
5	55	Corsicana	TX1750002	54,650	Testing will be conducted on Corsicana's water supply. Testing at Lake Halbert, Navarro Mills, and Richland Chambers will attempt to identify the presence of PFOS, PFOA, and PFAS compounds. Additional testing on decant lagoons will be done to examine the presence of PFOS, PFOA, and PFAS compounds removed in the coagulation process.	P	\$10,000.00

All project funding is principal forgiveness.

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**Appendix G. Project Priority List - Alphabetical**

Rank	Points	Entity	PWS ID	Population	Project Description	Requested Phase(s)	Total Project Cost
2	65	Daisetta	TX1460004	938	Due to ground water contamination (sodium, chlorides and total dissolved solids) and deterioration of the salt dome this PIF proposes a project which will provide for the construction of a new treatment facility at the new water well site. The proposed treatment facility will consist of a new chemical/equipment building, ground storage tanks, piping, high service pumps, chemical feed systems, electrical/SCADA, stand-by generator, paving, access drives, fencing, and all treatment related appurtenances.	PDC	\$2,220,375.00
13	40	Fort Worth	TX2200012	1,381,310	Understanding PFAS levels in each source and whether there are seasonal variations is critical as the utility undertakes pilot testing of various PFAS removal technologies. The utility intends to conduct pilot testing of powdered activated carbon, granular activated carbon, and ion exchange treatment technologies (with a focus on carbon adsorption). Based on pilot testing results, a site-specific conceptual treatment scheme and life-cycle costs for each of the five drinking water treatment plants would be developed. The conceptual designs and cost estimates would be incorporated into the utility's five-year Capital Improvement Plan and later moved into construction for regulatory compliance with the proposed rule implementation schedule.	P	\$1,040,000.00
14	40	Houston	TX1010013	3,600,000	Planning, design and construction of treatment processes at existing water purification plants to treat for PFAS and other emerging contaminants. Initial phase being requested is for the evaluation and planning of the necessary improvements. Work to include technology evaluation, pilot testing, construction and operational feasibility, cost effectiveness and production of a preliminary engineering report (PER).	PD	\$4,000,000.00
8	40	Laredo	TX2400001	256,153	Source Water Monitoring along the Rio Grande for Preventative Water Treatment Plant notification of contaminants. The City of Laredo water source is along the Mexico border and subject to an unknown array of potential water contaminants from sources outside of the United States and outside the EPA's knowledge of potential industrial wastes.	P	\$977,000.00
10	40	Lubbock	TX1520002	263,930	Project will perform a PFAS treatability study and review any additional PFAS compliance measures based on the results of the existing sampling being performed under UCMRS.	P	\$4,000,000.00
3	60	Parker County SUD	TX1840079	4,113	The proposed project includes the use of reverse osmosis (RO) technology to prepare for upcoming PFAS limits initiated by EPA in Spring 2023. Given the introduction of PFAS into source waters from wastewater effluent discharge, PCSUD is implementing RO technology to be prepared to reduce emerging contaminants from its source water.	PADC	\$66,491,000.00
4	60	Plainview	TX0950004	20,187	Project will perform a PFAS treatability study and review any additional PFAS compliance measures based on the results of the existing sampling being performed under UCMR5.	P	\$1,000,000.00
15	40	San Antonio Water System	TX0150018	2,009,324	The proposed project includes initial sampling and laboratory testing to determine presence of any PFAS compounds and possible costs if PFAS are detected. In the instance that PFAS are detected the project includes GAC and anion exchange construction costs, as well plugging, and well drilling for new supplemental sources.	PDC	\$42,320,000.00
6	55	Weatherford	TX1840005	36,251	This project includes monitoring for PFAS in the drinking water source and water treatment plant to complete planning activities related to control. The City of Weatherford also plans for expansion of their GAC contactor to address PFAS and other emerging contaminants, for which anticipated capital costs are included in this application.	PDC	\$26,202,671.00
<b>Total</b>		<b>15</b>					<b>\$175,620,496.00</b>

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**Appendix H. Alphabetical List of Ineligible Projects**

None.

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**Appendix I. Projects Ineligible for Disadvantaged Funding**

None.



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**Appendix J. Project Priority List - By Rank**

Rank	Points	Entity	PWS ID	Population	Project Description	Requested Phase(s)	Total Project Cost
1	155	Bronte	TX0410001	1,110	The City is proposing to construct a new micro or ultra-filtration water treatment plant to replace the existing facility. Lab testing has identified a lithium level of 64.5 µg/L which is greater than the 9 µg/L minimum reporting level described in the EPA 5th Unregulated Contaminant Monitoring Rule (UCMR 5).	PADC	\$15,000,000.00
2	65	Daisetta	TX1460004	938	Due to ground water contamination (sodium, chlorides and total dissolved solids) and deterioration of the salt dome this PIF proposes a project which will provide for the construction of a new treatment facility at the new water well site. The proposed treatment facility will consist of a new chemical/equipment building, ground storage tanks, piping, high service pumps, chemical feed systems, electrical/SCADA, stand-by generator, paving, access drives, fencing, and all treatment related appurtenances.	PDC	\$2,220,375.00
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4	60	Plainview	TX0950004	20,187	compliance measures based on the results of the existing sampling being performed under UCMR5.	P	\$1,000,000.00
5	55	Corsicana	TX1750002	54,650	Testing will be conducted on Corsicana's water supply. Testing at Lake Halbert, Navarro Mills, and Richland Chambers will attempt to identify the presence of PFOS, PFOA, and PFAS compounds. Additional testing on decant lagoons will be done to examine the presence of PFOS, PFOA, and PFAS compounds removed in the coagulation process.	P	\$10,000.00
6	55	Weatherford	TX1840005	36,251	This project includes monitoring for PFAS in the drinking water source and water treatment plant to complete planning activities related to control. The City of Weatherford also plans for expansion of their GAC contactor to address PFAS and other emerging contaminants, for which anticipated capital costs are included in this application.	PDC	\$26,202,671.00
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8	40	Laredo	TX2400001	256,153	Source Water Monitoring along the Rio Grande for Preventative Water Treatment Plant notification of contaminants. The City of Laredo water source is along the Mexico border and subject to an unknown array of potential water contaminants from sources outside of the United States and outside the EPA's knowledge of potential industrial wastes.	P	\$977,000.00
9	40	Corpus Christi	TX1780003	318,168	It has been proposed to add a third treatment train to the existing treatment facility to provide redundancy, and to improve treatment methods that can ensure compliance with the upcoming EPA proposed National Primary Drinking Water regulations on per- and polyfluoroalkyl substances (PFAS). Preliminary analysis will be conducted with bench scale and pilot testing to determine the most efficient and effective method of PFAS removal for the source water utilized to serve over 500,000 residents. Following the pilot study, design and construction of a full-scale treatment system that encompasses PFAS removal will be completed.	P	\$1,875,000.00

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