

### **TDEC Response to Public Comments on Draft *Water Infrastructure Investment Plan***

The Tennessee Department of Environment and Conservation (TDEC) thanks the many stakeholders who submitted comments during the open public comment period for the draft *Water Infrastructure Investment Plan*. During the comment period in October 2021, TDEC received approximately 300 unique comments from 148 individuals or entities, translating into 85 pages of condensed, unique comments for consideration. In the draft plan, TDEC included nine (9) prompts for public comment. Many of the comments and recommendations received during the public comment period are organized into these prompts. TDEC did receive some comments that could not be organized into the prompts, which are represented in the “General Comments Section.”

TDEC issues the following response to public comments. This document serves to provide stakeholders with additional information and indicates changes made to the draft plan during final plan development. The complete list of comments and recommendations is attached as an Appendix to this response to comments.

TDEC’s *Water Infrastructure Investment Plan* may be found on the [TDEC ARP website](#).

#### **TDEC Prompts from Draft Plan**

- *What types of systems that align with Treasury ARP rules warrant inclusion in this plan?*

TDEC received zero (0) comments and four (4) recommendations under this prompt.

Most comments supported the types of systems that are included in the draft plan. One commenter asked for clarification about “stormwater management systems.”

**Response:** In the Draft Plan, stormwater management systems referred to systems and practices engineered to manage, reduce, infiltrate, reuse, capture, treat, and mitigate stormwater. Many communities use stormwater management systems regardless of utility ownership or legal designations. TDEC intends to improve clarity about eligible system types for funding by identifying cities and counties with responsibility for drinking water systems with a Public Water System Identification (PWSID) or public wastewater and stormwater systems with a National Pollutant Discharge Elimination System (NPDES) permit or a State Operating Permit (SOP).

Municipal Separate Storm Sewer System (MS4) programs and utilities qualify under this designation.

- *Are counties well equipped to serve as the primary subrecipient of these funds, acting as a pass-through entity to municipalities and/or water systems included a county?*

TDEC received sixty-eight (68) comments and ten (10) recommendations under this prompt.

Most comments focused on the challenges of counties serving as the primary subrecipient for the non-competitive grant dollars under the Water Infrastructure Investment Program. These challenges included, but were not limited to a lack of staff and dedicated resources to plan, administer, and oversee grant execution responsibilities; the inability to coordinate utility project planning and prioritization; that counties often do not own or operate utilities or water infrastructure facilities; that counties lack the appropriate information and technical expertise to develop projects and proposals; that counties do not want oversight and monitoring responsibilities; concerns about how to distribute funding amongst systems and potential inequities in distributing dollars; that counties do not want to leverage local ARP dollars to meet co-funding requirements; political or other tensions between cities and counties and the role of politics in distributing dollars; that some utilities cross county boundaries; and that county and system priorities may not align and this misalignment may impact project and proposal development. Commenters noted that the landscape of suitability for counties to serve as subrecipients varied, with some counties well-equipped and others ill-equipped. A few commenters discussed concerns that counties would want to use dollars to expand services to county residents rather than address existing infrastructure, which points to potential misalignment of county and system priorities.

Many comments recommended changing subrecipient eligibility to include cities and/or utilities. Commenters noted that the dollars should go more directly to systems, as system officials are more familiar with system needs, priorities, and technical development of projects.

***Response:*** Based on the substance and volume of comments received, TDEC has expanded subrecipient eligibility to include both counties and cities (incorporated) in the final plan. The three metropolitan governments are treated as county subrecipients. A complete list of funding allocations for counties and cities may be found in the final *Water Infrastructure Investment Plan*. TDEC believes this plan will

capture municipally owned systems, as well as county owned systems. These entities may independently apply for a non-competitive grant.

TDEC recognizes some county and city managed utility systems operate and serve residents beyond their jurisdictions. Collaboration across these local governments is strongly encouraged. Community leaders should work together, across these jurisdictions, to prioritize and fund critical need projects. Cities and counties are also expected to collaborate with utility districts that serve their jurisdictions. Collaboration and mutual financial support between these entities is encouraged to comprehensively address water system challenges.

A few comments requested specific guidance or support from TDEC relating to disbursement of dollars at the subrecipient level. Specifically, commenters asked for an approach of how to divide money between systems; additional information about project and proposal development and submittal, including deadlines; and the desire to use interlocal agreements.

**Response:** By expanding subrecipient eligibility to include eligible cities and counties, including metropolitan governments, and recognizing that over half of the water and wastewater systems in the state are city or county operated, TDEC anticipates a simplification of disbursement dollars from subrecipients to systems. TDEC encourages cities, counties, and metropolitan governments that receive service from external partners to distribute dollars to the systems that serve their population and have prioritized critical areas of need. TDEC expects pooling of available resources and sharing in co-funding requirements for all proposals that include more than one entity.

TDEC will release a non-competitive grant manual in early 2022 with additional details about project and proposal requirements, including the process for development and submittal. The grant manual will also contain pertinent deadlines and logistical information about proposal submittal and grant execution. Following release of the grant manual, TDEC will host training workshops across the state to provide technical assistance to systems, cities, and counties regarding the non-competitive grant process.

- *What alternative approaches to distribution of funds will balance state and local government and other subrecipient administrative and compliance burden?*

TDEC received fifteen (15) comments and twenty-four (24) recommendations under this prompt.

Many of the comments received under this prompt align with concerns in the prior prompt. Additional comments included a request for a cap on spending for administrative expenses on local governments and additional clarification around eligibility of these expenses. Many commenters reiterated the desire for dollars to go directly to cities or systems rather than through counties and mentioned that increasing the administrative burden on the state through additional subrecipients will be offset by reducing the administrative burden on local governments. Some commenters expressed a desire for enhanced flexibility to administer funds to systems if counties will not accept the dollars.

**Response:** TDEC notes the expansion of eligible subrecipients to include cities and counties, including metropolitan governments, will capture most publicly owned systems across the state. TDEC requests these entities work with utility districts and other systems that serve their citizens, on project and proposal development. Counties, cities, and metropolitan governments should consider a partnership process like that used with Community Development Block Grants.

TDEC will impose a cap (6% of funding allocation) on dollars that may be used for pre-grant collaborative planning and administrative activities in the *Water Infrastructure Advisory Plan*. This cap aligns with the state-level cap (6%) for administrative activities. TDEC considered administrative expenses associated with other programs and consulted with partner agencies to determine the 6% cap. TDEC will include additional information about administrative activities and procurement requirements in the forthcoming non-competitive grant manual.

- *What allocation approach makes sense and what specific suggestions for alternative arrangements are feasible?*

TDEC received seventeen (17) comments and thirty (30) recommendations under this prompt.

TDEC received a variety of comments on the proposed allocation approach. Many commenters flagged that infrastructure is more expensive to build and maintain in rural areas due to the low density of rate payers and larger distances required to install

infrastructure. Other comments indicated that urban communities were not receiving adequate funding, as evidenced by the lower dollars per person allocated to those counties. Several comments emphasized that disadvantaged communities should receive additional funding. Commenters from highly visited areas pointed to a lack of accounting for tourism and non-residents in allocating dollars. TDEC received a variety of recommended allocation formulas.

**Response:** TDEC has weighed the substance and volume of comments by stakeholders and has modified the funding allocation tables. TDEC requested input from Economic and Community Development, Finance and Administration, the Office of the Comptroller of the Treasury, and economists and reviewed all comments submitted on the draft Plan to develop a new funding structure. The new funding structure divides dollars based on three (3) variables: a base (or equal) allocation to provide subrecipients with “seed” money to conduct at least one project, a population allocation to serve as a proxy for customers served, and an [Ability To Pay Index](#) adjustor to meet state and federal priorities of distributing additional dollars to disadvantaged communities.

TDEC acknowledges funding allocations will not exactly mirror system needs and challenges. Additionally, TDEC notes that not all water system challenges can or will be solved with state and local fiscal recovery fund dollars given the magnitude of need and the ARP timeframe. TDEC encourages communities with needs that exceed the allocation provided through the Water Infrastructure Investment Program to consider how to leverage these dollars for planning and investigation activities that will set systems up for future financial investments in infrastructure. TDEC may deploy dollars from the state-initiated strategic project fund to support communities that need additional assistance with water infrastructure projects.

TDEC received comments regarding the Justice40 Initiative, a new federal policy directed to increase federal investments to disadvantaged communities.

**Response:** The Justice40 Initiative, included in Executive Order 14008, sets a goal to provide 40% of benefits realized by federal investments to disadvantaged communities. As of December 2021, the Justice40 Initiative is in a pilot phase with various programs across the federal government to develop and define aspects of the initiative, such as how to quantify and measure benefits realized from federal investments, how to define disadvantaged communities, and how to engage with communities. The Justice40 Pilot Program is supported by interim guidance, released

in July 2021, but lacks critical details needed for robust implementation across programs.

TDEC's State Revolving Fund (SRF) program partnered with the University of Tennessee's Institute of Agriculture to develop an Ability To Pay Index (ATPI), as required by state and federal statute, to distribute SRF subsidies. SRF's ATPI assesses the economic health of a community, using socio-economic and financial data relative to the state. A community's ATPI is determined using variables such as median household income, poverty rates, reliance on food stamps, unemployment rates, community revenue, debt, assets, and expenditures, along with changes in population. ATPI values have been calculated for all 95 counties and 347 cities and towns in Tennessee. An ATPI of 50 or below is considered disadvantaged. The new allocation divides \$1 billion dollars with 59% of the funding being allocated to disadvantaged communities and 41% to non-disadvantaged communities. 55% of all eligible communities are allocated \$1 million dollars or more.

Without further guidance and direction from the federal government, TDEC is using the established ATPI as our best available information to help support underserved and disadvantaged communities.

Several commenters requested that TDEC use the 2020 census counts in the allocation formula.

**Response:** TDEC utilized the 2020 census counts in the *Water Infrastructure Investment Plan*.

Some comments requested that TDEC further specify how funding should be disbursed amongst water, wastewater, and stormwater projects. Some requested that TDEC provide an allocation structure for how a subrecipient should disburse money to projects and systems. Additionally, commenters asked for guidance from TDEC to have subrecipients rank or prioritize projects that are proposed by systems.

**Response:** TDEC recognizes that communities and systems face unique challenges and have independent priorities and needs. Therefore, TDEC looked to retain flexibility in how systems, cities and counties, including metropolitan governments, allocate and distribute dollars among different water infrastructure systems based on highest need and ARP timeframe feasibility. TDEC encourages collaborative conversations between systems and cities, counties, or metropolitan governments, with potential support from outside entities, to identify priorities and develop projects.

Under the non-competitive grant, TDEC will not rank or prioritize projects or proposals. Rather, all proposals that meet minimum criteria detailed in the upcoming grant guidance may access grant dollars. TDEC recognizes that not all infrastructure needs are fully funded under the allocation formula. TDEC encourages funding the highest impact projects with the best chance of feasibility and completion within the timeframe allowed. Subrecipients should evaluate all water infrastructure needs in their jurisdiction and have open, collaborative conversations with all systems providing water or wastewater services to their residents to develop the highest and best use of funds proposals.

In an effort to support community-based prioritization based on critical needs, all systems will be required to complete a Tennessee Infrastructure Scorecard to access dollars under the Water Infrastructure Investment Program.

TDEC's SRF loan program, in collaboration with the Tennessee Association of Utility Districts, developed the Tennessee Infrastructure Scorecard, an online tool to support analyzing a water, wastewater, or stormwater system's financial, operational, and environmental health. This Scorecard may serve as a needs assessment for systems to support development of projects that are high-impact, address system challenges, and demonstrate a positive financial, operational, or environmental outcome. Further, subrecipients should anticipate addressing critical needs in ARP grant proposal development to be eligible to receive funding.

- *What sources of funds such as federal, state, or local funds, and what type of co-funding, such as direct, indirect, or in-kind should be accepted?*

TDEC received nineteen (19) comments and thirteen (13) recommendations under this prompt.

Commenters primarily focused on the bracketed co-funding requirement, specifically, cities and counties, including metropolitan governments, differ in their ATPIs and the desire for a single state-wide match. Some suggested co-funding for distressed and/or small population counties be dropped and noted that communities with an ATPI of 50 or less should have the lowest co-funding bracket. A few comments wanted the co-funding requirement eliminated entirely.



**Response:** The interim final rule indicates that recipients (i.e., State of Tennessee) may “direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria” to funds.<sup>1</sup> The Governor’s Financial Stimulus Advisory Group determined co-funding will be part of the required criteria to receive State Fiscal Recovery Funds. TDEC has aligned cities and counties, including metropolitan governments, with their respective ATPI for co-funding. TDEC also expanded the number of communities with the lowest co-funding (20%) requirement to include all disadvantaged communities (ATPI of 50 or less).

In the final plan, additional strategies to lower co-funding requirements by up to 10% based on project type are provided and leveraging of local fiscal recovery funds to meet co-funding requirements is incentivized. If multiple entities collaborate on projects, then project co-funding requirements will be that of the lowest of the partners involved.

The combination of proper ATPI alignment for co-funding, expanding the lowest co-funding requirement of 20% to include all disadvantaged communities (ATPI of 50 or less) and including a variety of additional incentives to lower co-funding totals should have a positive impact on all systems that struggle to secure local dollars to meet this requirement.

Other comments focused on the nature of the co-funding, including the concern that communities would be “penalized” for not using local ARP dollars to co-fund. Commenters requested that TDEC use maximum flexibility in funding sources that are eligible for co-funding requirements. One commenter noted that “creative accounting” should be discouraged.

**Response:** TDEC will utilize maximum flexibility in funding sources that are eligible to meet co-funding requirements. Local fiscal recovery fund dollars are *not* the only way to meet co-funding requirements and communities will not be penalized for using their local fiscal recovery funds on other projects. TDEC will accept cash and in-kind contributions to meet co-funding requirements. TDEC included information about co-funding requirements in the final plan and will include additional information in forthcoming grant guidance.

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<sup>1</sup> Coronavirus State and Local Fiscal Recovery Funds, 31 CFR Part 35



- *How, through this Water Infrastructure Investment Program, can TDEC further support subrecipients in engaging in planning and identification of projects for inclusion in proposals?*

TDEC received eleven (11) comments and three (3) recommendations under this prompt.

TDEC received several recommendations under this prompt, including the request for workshops, online materials, and recommendations to expedite regional projects; to clearly define eligible expenses; and to collaborate with an organization such as the Tennessee Association of Utility Districts to support proposal development. One commenter focused on the importance of city and system involvement in project identification and development. One commenter asked for state-initiated strategic project dollars to be allocated, in part, to capital improvement plans for systems.

**Response:** TDEC plans to host regional workshops to support systems, cities, and counties, including metropolitan governments, in project and proposal development following release of the non-competitive grant manual in early 2022. These materials will be made available on the [TDEC ARP website](#). TDEC notes online and in the final investment plan that eligible activities for the Water Infrastructure Investment Program align with Clean Water and Drinking Water State Revolving Fund eligibility. TDEC will work to further support systems, cities, and counties, including metropolitan governments, with more specific guidance on eligible expenses in the forthcoming grant manual.

In the non-competitive grant framework, TDEC anticipates that systems will play a leading role in project identification and development. Systems will need to collaborate with cities and/or counties, including metropolitan governments, in proposal development and project aggregation.

- *What additional actions can TDEC take to more fully inform interested stakeholders on its plans for deploying these funds and the non-competitive grant program in particular?*

TDEC received zero (0) comments and nine (9) recommendations under this prompt.

Recommendations received under this prompt focused on interest in regional and/or individual engagement with systems, cities, and counties, including metropolitan governments, maintaining an active and updated website, notifying stakeholders of updates

and changes through the email distribution list, and maintaining open and frequent communication. One commenter asked that TDEC engage in early conversations with stakeholders about projects that are unlikely to be completed under the ARP timeframe.

**Response:** TDEC is and will continue to engage in open, frequent, and proactive communication with stakeholders regarding the Water Infrastructure Investment Program. TDEC maintains and regularly updates its website ([tn.gov/environment/arp](https://tn.gov/environment/arp)) with updates and shares major updates with proactive emails to the email distribution list. In January 2022, TDEC will host a webinar series, open to all interested individuals, covering the final investment plan. Following release of the non-competitive grant manual in early 2022, TDEC will host training workshops regionally across the state to provide technical assistance to stakeholders regarding the non-competitive grant process. As a part of the grant manual, TDEC will provide information about project types that are feasible to accomplish under the ARP timeframe.

- *What current water infrastructure data and information challenges exist today, and how could a state-led project alleviate those challenges?*

TDEC received nine (9) comments and five (5) recommendations under this prompt.

Comments and recommendations received under this prompt primarily focused on the build-out of technology, including GIS and electronic data systems that supports asset management planning across the state. One comment focused on data consistency and asked to expand the use of the Tennessee Infrastructure Scorecard to an annual submittal. Some comments focused on the need to procure software or other tools and train users on these tools. Two (2) comments requested that TDEC form a technical advisory committee or taskforce to support systems and communities with adopting technologies and developing standards and methods that are shared with systems throughout the state.

**Response:** TDEC notes the focus on GIS, electronic data systems, and the need for consistency across systems statewide. The Department will continue to explore mechanisms for supporting systems with these needs, including to promote robust asset management planning and sustainable and resilient system operation. Currently, TDEC does not anticipate requiring submission of the Scorecard annually but will require post-project submission of the Scorecard to understand the impact that ARP-funded project(s) had on system performance.

- *What project types and subrecipients should be emphasized through a competitive granting program?*

TDEC received two (2) comments and twelve (12) recommendations under this prompt.

Comments received under this prompt included specific recommendations for competitive granting program priority project types. These recommendations included construction projects (plant replacement, line, and infrastructure upgrades), innovative, sustainable, or resilient projects including the use of technology, and a focus on stormwater. Some commenters requested the use of needs evaluations to develop the competitive grant program.

**Response:** TDEC appreciates the early engagement on prioritization of project types for the forthcoming competitive grant program. When TDEC develops the competitive grant program, it will consider factors including needs evaluations (e.g., State Revolving Fund priority list, Tennessee Infrastructure Scorecard results, TN H2O), timeframe for obligating and spending dollars, and gaps identified in the non-competitive grant program.

## **General Comments**

TDEC received a wide variety of comments on important, innovative, or critical project types that should be considered for funding. Green infrastructure, source water protection, regional water supply planning, water loss, compliance, new technologies for wastewater effluent, and eliminating inflow and infiltration were of particular concern for stakeholders. Many commenters expressed interest in rehabilitation of existing infrastructure and construction ready projects, while others were interested in focusing on new service in unserved communities.

**Response:** Most suggestions for project types and areas of focus fit within the scope of project eligibilities in SRF guidelines. TDEC, in partnership with a variety of state agencies and partners, has narrowed the most critical need project types to systems with significant non-compliance issues, that lack asset management plans, that have excessive water loss or inflow and infiltration, or with seriously aging and failing systems. Beyond obvious, critical needs, TDEC does not anticipate dictating how systems spend non-competitive grant dollars if projects meet SRF and ARP eligibility requirements and all state and federal permits are acquired prior to

construction. More information on permit requirements can be found in the upcoming grant guidance.

Many stakeholders expressed concern about project logistics, supply chain issues, depreciation, the benefits of shovel ready versus planning and design projects, and general project execution struggles.

**Response:** TDEC recognizes the wide variety of challenges a community faces trying to execute a capital improvement project. Current economic trends and supply-chain issues increase the complexity and lengthen the timing of projects. TDEC is extending the maximum flexibility afforded states through the Treasury Interim Draft Rule to subrecipients. If federal guidance changes during the ARP grant period, TDEC will consider the changes, make recommendations, and inform applicants and grantees of any grant modifications to requirements.

Depreciation is a burden enterprise funds must comply with based on state statute. TDEC has no authority to modify or wave this requirement. The Office of the Comptroller of the Treasury can address any questions a system may have concerning depreciation.

Given the mix of issues with supplies, access to engineers, and the effects of depreciation on a community's budget, some systems may elect to focus on investigation, planning, and design projects. These project types can be costly and fulfill pre-application requirements for SRF loans. Cities and counties, including metropolitan governments, should consider timelines and feasibility when determining if a construction project or a planning and design project is the best use of state fiscal recovery dollars. TDEC supports a wide range of investigation, planning, and design projects. However, under SRF requirements, these projects must reasonably lead to a construction project. Cities and counties, including metropolitan governments, that propose many planning and design projects without engaging TDEC SRF or Economic and Community Development for a potential construction loan may be discouraged from developing documents that use vital resources without resolving infrastructure needs.

General comments on state coordination of environmental reviews, information on proposal review and award process, milestone expectations for awarded projects, a variety of incentives and other project execution details were noted. TDEC also received several inquiries about use of public funds for private developments and land acquisition.

**Response:** TDEC recognizes stakeholders want details on how and when project proposals will be received, reviewed, and awarded. TDEC is electing to implement a streamlined State Revolving Fund-style process with the minimum criteria and reporting requirements allowed. Details on the proposal process, incentives, criteria, milestones, and reporting expectations will be detailed in the upcoming grant guidance. TDEC will consider these public comments and recommendations when developing the grant guidance.

Some commenters expressed concern and interest for how TDEC identified and awarded State Strategic Initiative project dollars. There were both positive and negative responses for use of dollars on industrial development and community support near anticipate growth and expansion of industrial sites.

**Response:** TDEC acknowledges the concerns expressed by our stakeholders on how state strategic funds are allocated. TDEC intends to be cautious and intentional with these funds. Projects will be reviewed on a case-by-case basis as directed by TDEC leadership.

There were a few comments focusing on priority areas identified in the draft plan, and specifically, how the priorities are weighted, the fact that these priorities may limit good projects, and how priority goals are reached in a proposal.

**Response:** TDEC considered these comments, along with additional changes made in the final plan and has opted to incentivize projects focusing on priority areas in lieu of requiring proposals address multiple priorities. TDEC will expect proposals to address critical needs, as demonstrated through a system's Scorecard, but will not impose a requirement to address a certain number of priority areas of emphasis in proposals.

TDEC received many comments pertaining to environmental justice, primarily indicating that the draft funding allocation did not provide sufficient funding to disadvantaged communities. Some of these comments are discussed in detail in previous sections. Additional response is offered below.

**Response:** TDEC utilizes the ATPI, which includes nine (9) factors unique to each community (median household income, unemployment, food stamp dependence, families in poverty, community assets, revenues, debt, and expenditures, and change

in population), in the State Revolving Fund loan program to set interest rates and award additional subsidies. TDEC considers a community with an ATPI of 50 or less as economically disadvantaged. In the draft plan, TDEC utilized ATPI to determine co-funding requirements, with lower co-funding requirements imposed on communities with lower ATPIs.

In the final plan, TDEC considers ATPI as a variable in the funding allocation formula to meet state and federal priorities of distributing additional dollars to more disadvantaged communities. By including ATPI in the funding allocation formula, TDEC now allocates 59% of the \$1 billion available for non-competitive grants, or \$590 million, to cities and counties, including metropolitan governments, with an ATPI of 50 or below.

Investment of state fiscal recovery fund dollars into water infrastructure represents an incredible opportunity for water systems across the state. However, TDEC recognizes that these funds are not sufficient to address the \$5-15 billion estimated needs for investment in water infrastructure in the state. Additionally, the timeframe associated with these dollars limits the ability for communities to leverage these dollars for large-scale construction projects, with current federal deadlines set at obligating funds by December 31, 2024 and spending all dollars by December 31, 2026. As such, TDEC anticipates that communities may utilize dollars under the Water Infrastructure Investment Program to conduct investigation and planning activities that will poise communities to take advantage of future funding opportunities.

Commenters wanted more information on the Water Infrastructure Advisory Committee, including listing the members and the WIAC responsibilities.

**Response:** TDEC has developed an Advisory Committee page on its American Rescue Plan website. The page details the background of the committee, membership make-up, goals, roles and responsibilities, and all meeting materials. Stakeholders may visit the [TDEC ARP website](#) for additional information.

Commenters requested that TDEC develop and maintain a public dashboard with the status of water infrastructure activities.

***Response:*** TDEC plans to publicize a public dashboard that provides status updates on water infrastructure projects funded through ARP.

One commenter suggested using hydrometeorological data to assess urban stormwater responses and noted that the state should improve its rain and stream gage network.

***Response:*** The activities described in the comment are outside the scope of eligible activities for ARP dollars.