Comments to the Water Infrastructure Draft Investment Plan

Dear TDEC ARP Staff –

Protect Our Aquifer and our supporters throughout West Tennessee appreciate the opportunity to provide comments and feedback to the Draft Water Infrastructure Investment Plan. This grant from the federal government and American Rescue Plan Act is a transformative opportunity to rescue Tennesseans from failing infrastructure. We urge TDEC to view this as an opportunity to promote health, justice, and environmental stewardship as prioritized by the mission of your agency.

Our comments are broken into three primary categories:
1. Planning and Needs Assessment Before Dollar Allocations
2. Compliance with Executive Order 14008
3. Remove Matching Requirement and Focus on ARP Intent

1. Planning and Needs Assessment Before Dollar Allocations

The plan begins with a set formula for counties independent of needs across the state. This is the first fatal flaw as assessing the true needs across the state should come first. Using the Infrastructure Scorecard, weaknesses and vulnerabilities in systems can be determined across the state. Assessing need, in conjunction with planning documents and compliance issues, should be the primary approach in determining the allocation of resources.

We recommend a funding formula that is based on the outcome of the Infrastructure Scorecard and a reflection of Justice40. Instead of allocating a flat amount to Counties, the dollars can be divided amongst TDEC’s Field Offices for further distribution as they have closer relations with service providers in their territories and a better understanding of their systems. This can streamline the process for Counties and better allocate ARP dollars to the systems most in need – for compliance, strengthening of failing vulnerable infrastructure, and protection of human health.

There are differing needs across the state. We have heavily urban centers and dispersed rural populations. Using population for the basis of the funding equation isn’t a relevant factor in determining where the highest priorities in our infrastructure vulnerabilities are. We encourage transparency in this process and TDEC should publish the results of the Infrastructure Scorecards rankings, comprehensive plans, and compliance issues. The revised formula and allocation chart also need to be a part of this published database.

By approaching the investment in a more strategic way – through the compilation of the Infrastructure Scorecard and key priorities – funding can be equitably allocated and reduce burden on the Counties. This approach also supports the general needs identified in TN H2O and can provide a better foundation for the management of assets.
2. Compliance with Executive Order 14008

We believe the funding formula for the allocations of dollars is fundamentally flawed, not just in the sole basis on population, but with the exclusion of the directives presented in Executive Order 14008 termed “Justice40.”

This is a precedence-setting funding opportunity to reinvest in infrastructure, and it requires a unique approach as outlined by Congress and the Federal Administration distributing these funds.

Justice40 states that disadvantaged communities should receive 40% of benefits from federal investments in clean energy and transit, sustainable housing, training and workforce development, **clean water infrastructure**, and legacy pollution remediation and reduction. As the $1.35 billion in discussion is sourced from the Federal Government under ARP, these dollars would qualify. We agree with the definition of small communities cited in the Investment Plan. Although, there is a discrepancy with the definition “disadvantaged” and “underserved” communities. (what is the discrepancy? is it below?)

The White House Environmental Justice Advisory Council (WHEJAC) provided interim recommendations that includes a definition consisting of majority minority communities, formerly redlined communities, high rate of health disparities, income and percentage of households on supplementary income benefits, numbers of superfund, waste, landfills and toxic facilities. The full recommendation can be found on page 64 of the interim final report.

It is of note that LaTricea Adams, a Tennessean and Memphian, was appointed to WHEJAC and is actively involved in the implementation and enforcement of Justice40. LaTricea also serves on Protect Our Aquifer’s Board of Directors.

Neither the Investment Plan nor formula reflect the intent of Justice40. For example, the presented formula allocates the least dollars per person for Shelby County residents – the Tennessee county with the highest Black population. The proposed allocation would give predominately white counties a much higher amount per capita. To compare with Shelby County, Pickett County would receive over $400 dollars more per resident than either Shelby or Davidson Counties – the most densely populated and racially diverse counties. Without a need- or impact-based assessment, the state cannot reasonably justify the racially disparate distribution of funds.

It is important that TDEC ensure that its ARP funds allocation model does not result in discrimination against protected classes by systematic underinvestment in their communities.

There has been a lack of input from Black, Latinx, Indigenous and historically underserved populations. TDEC should engage with the environmental justice communities as the representatives in the state appointed committees are not diverse. This should move beyond the single Diversity and Inclusion Council and integrate disadvantaged community voices into existing committees. TDEC needs to be compliant with Justice40 and retool the formula.
Additionally, TDEC should consider rules surrounding contracting with Black, Latinx, and Indigenous owned businesses. This data can be tracked in a clear and transparent, community facing GIS database as noted in the first section. Specific metrics to Justice40 should be included. The Southern Economic Advancement Project (SEAP) has created a database that can serve as a model for TDEC.

3. Matching Requirement and ARP Intent

Congress passed the American Rescue Plan in direct response to the coronavirus pandemic as communities grapple with public health and economic impacts. Central to this law, and as reflected in its title, is the word “rescue.” The overall purpose of the American Rescue Plan is to support the citizens and institutions which have suffered particular hardships due to COVID-19. TDEC’s proposal to utilize public funds for private development is neither the highest nor the best use of this money. TDEC should reevaluate the state-priority projects that relate to funding proposal and reaffirm its commitment to prioritize spending of ARP water infrastructure dollars on community-based projects.

We encourage TDEC to refocus the plan on previously identified areas and information from the Infrastructure Scorecard where the is limited and insufficient funding to update Tennessee’s existing infrastructure. The nearly $200 million slated for ECD to entice future industrial development and build new developments takes needed dollars away from the critical maintenance, upkeep, repair, and long-term planning of the State’s water infrastructure.

We have heard mentioned multiple times that Metro areas have already received ARP funds and it appears TDEC has penalized these communities in the water infrastructure investment formula. The Metro areas within Tennessee are historical and have been built and developed over the past two hundred years. Infrastructure needs extend far beyond water and many governmental agencies have already voted and approved the use of ARP County and Metro funds without knowledge of this matching requirement. TDEC should not penalize them for investing the federal ARP funds to other high priority uses.

Match dollars should not be required to receive this funding. When accounting for match funds, the dollars per capita are greatly reduced when a public service provider has to produce additional matching funds. The match requirement places an unnecessary burden on communities and counties already facing financial strain.

In summary, we appreciate the staff time, energy, and thought power that has gone into leading this opportunity for major investment into our critical water infrastructure. These funds are precedence-setting. Using the State Revolving Fund template is unnecessary and TDEC should look to determine need before distributing funding, all in compliance with Justice40.

Sincerely,

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