

WASHINGTON STATE DEPARTMENT OF HEALTH

Environmental Justice Assessment Report

Chapter 246-296 WAC
a Rule Concerning
Drinking Water State
Revolving Fund Loan
Program



May 2024



DOH November 2023

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Environmental Justice Reporting Overview



An Environmental Justice Assessment (EJA) is an opportunity to assess the environmental justice impacts of an agency action. The template is designed to meet all of the requirements established under [Washington’s Environmental Justice Law](#)¹ (also known as the HEAL Act). While it was developed by the HEAL Interagency Working Group, this document has been adapted by the Washington State Department of Health (DOH) to meet agency needs for fulfilling the requirements of completing an EJA.

EJA Table 1: Environmental Justice Assessment Overview

1. Primary agency responsible for this action	Washington State Department of Health Office of Drinking Water
2. Primary agency staff contact(s)	Chelsea Cannard – chelsea.cannard@doh.wa.gov Nina Helpling – nina.helpling@doh.wa.gov Chris Pettit – chris.pettit@doh.wa.gov
3. Secondary agency contact(s), if applicable	
4. Description of proposed significant agency action	The Office of Drinking Water is undertaking a significant rulemaking under the Drinking Water State Revolving Fund to update the definition and affordability criteria for a “disadvantaged community” under Chapter 246-296 WAC ² . The Bipartisan Infrastructure Law (BIL) ³ requires states to evaluate existing definition of disadvantaged communities to better identify groups facing the greatest barriers in accessing safe drinking water. According to BIL, a significant percentage of DWSRF funding must be administered as subsidy (up to 100% loan principal forgiveness) to projects serving disadvantaged communities, determined by the loan type and funding source.
5. Date environmental justice assessment was initiated	August 2023
6. Date environmental justice assessment was completed	May 2024
7. Type of significant agency action (check one)	<input checked="" type="checkbox"/> The development and adoption of significant legislative rules as defined in RCW 34.05.328 ⁴ <input type="checkbox"/> The development and adoption of any new grant or loan program that a covered agency is explicitly authorized or required by statute to carry out <input type="checkbox"/> A capital project, grant, or loan award by a covered agency of at least \$12,000,000 or a transportation project, grant, or loan by a covered agency of at least \$15,000,000 <input type="checkbox"/> The submission of agency request legislation to the office of the governor or the office of financial management for approval

	<input type="checkbox"/> Any other agency actions deemed significant by a covered agency consistent with RCW 70A.02.060 ⁵ if so, please name: _____
<p>8. Link(s) to initial notification with Office of Financial Management and/or other postings, such as publicly available results, materials, or reports related to the assessment.</p>	<p>Drinking Water State Revolving Fund Program Rulemaking Office of Financial Management⁶</p> <p>Notification of Environmental Justice Assessment on Significant Rulemaking (wa.gov)⁷</p> <p>Drinking Water State Revolving Fund (SRF) Loan Program Washington State Department of Health⁸</p> <p>WSR23-11-003.pdf (wa.gov)⁹</p>

Environmental Justice Assessment Template



Background Information:

In January 2021, President Biden signed [Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad”](#)¹⁰ implementing the [Justice40 initiative](#)¹¹. This initiative sets a goal for “disadvantaged communities” (characterized as marginalized, underserved, and communities overburdened by pollution) to receive at least 40% of specific Federal investments. On November 15, 2021, President Biden signed the [Bipartisan Infrastructure Law](#)¹² (BIL), which allocated \$50 billion to the United States Environmental Protection Agency (EPA) to strengthen drinking water and wastewater systems. A large portion of this money is allocated to Drinking Water State Revolving Fund (DWSRF) programs through a partnership established by the [1996 Safe Drinking Water Act](#)¹³ (SDWA) amendments. Each DWSRF program provides money to public water systems for improvement projects according to state eligibility guidelines.

The BIL requires DWSRF programs to allocate 49% of DWSRF funds as grants and forgivable loans to projects serving disadvantaged communities. To achieve this, [EPA Bipartisan Infrastructure Law Implementation guidance](#)¹⁴ recommends states evaluate their state-specific definition of “disadvantaged community” and affordability criteria to better capture environmental justice concerns. Rulemaking for the DWSRF will ensure that disadvantaged communities equitably benefit from the distribution of program dollars available for subsidies, such as low interest loans, longer loan terms, and loan principal forgiveness.

As of December 29, 2023, the [Washington State DWSRF program](#)¹⁵ has maintained compliance with BIL by filing four emergency rules while the formal rulemaking process is taking place:

1. [WSR 23-05-069](#)¹⁶ Filed February 13, 2023
2. [WSR 23-06-064](#)¹⁷ Filed February 28, 2023
3. [WSR 23-18-044](#)¹⁸ Filed August 30, 2023
4. [WSR 24-02-060](#)¹⁹ Filed December 29, 2023

Considerations:

- For the purposes of this EJA, overburdened communities²⁰ and vulnerable populations²¹ as defined in the HEAL Act are not the same as disadvantaged communities as defined in state and federal law and therefore are not interchangeable.
 - To effectively evaluate the criteria for this EJA, [RCW 70A.02: Environmental Justice Law](#)²² requires DWSRF to identify overburdened communities and vulnerable populations using specific indicators which include race and ethnicity. The purpose of identifying these communities is to determine potential environmental harms and benefits of the given agency action and involve these communities in agency processes to reduce environmental harms.
 - The use of the term “disadvantaged community” is a federal program term used in the DWSRF program with specific limitations outlined in [40 C.F.R. § 7.35](#)²³ and [Title VI of the Civil Rights Act](#)²⁴ where race and ethnicity cannot be used as criteria for funding

decisions. DWSRF must meet federal requirements to receive federal funds and is in compliance with federal regulations.

- Water systems owned and operated by federally recognized tribes are regulated by the EPA and can access funding from both state and federal SRF programs but cannot use funding from both to pay for the same project.

Section 1

Analyze Environmental Benefits and Harms

- 1. Describe likely environmental benefits¹ for overburdened communities, vulnerable populations, and tribes associated with this action.**

This rulemaking will increase the number of public water system infrastructure projects eligible for loan subsidy. Loan subsidies can help public water systems make necessary improvements while potentially limiting increases on customer water bills to pay for system repairs. Replacing old infrastructure can help water systems avoid emergency repairs and outages, plan for climate resiliency, reduce exposure to lead pipes, and ensure adequate treatment of drinking water.

- 2. Describe likely environmental harms² for overburdened communities, vulnerable populations, and tribes associated with this action.**

There are no environmental harms associated with updating the definition of disadvantaged communities. This rulemaking will adjust the allocation of loan subsidy opportunities to assist public water systems in improving their infrastructure, which directly benefits the communities they serve.

- 3. Describe likely associated positive health impacts for overburdened communities, vulnerable populations, and tribes associated with this action.**

More than 6.2 million Washington State residents (85% of the state's population) get their drinking water from public water systems. The systems and their operators are the first line of defense against contaminants and waterborne pathogens getting into public water supply. [According to the American Public Health Association²⁵](#), exposure to unsafe drinking water is common among people living in low-income communities and those in rural, tribal, and immigrant areas with aging water systems. By revising the definition of disadvantaged communities to include population characteristics, it becomes possible to provide financial support to water systems that cater to individuals facing a greater risk of exposure. This can

¹ **Environmental benefits** mean activities that: (a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts; (b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or (c) meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of chapter 70A.02 RCW.

² **Environmental harm** means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected: (a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land; (b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change; (c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or (d) Health and economic impacts from climate change.

reduce the risk of drinking water related illness (such as Legionnaires' disease, Pseudomonas aeruginosa, norovirus, giardiasis, and bacterial infections), exposure to lead, and keep water bills affordable to customers in those communities.

4. Describe likely associated negative health impacts for overburdened communities, vulnerable populations, and tribes associated with this action.

There are no negative health impacts directly associated with updating the definition of disadvantaged communities. However, there are potential negative health impacts associated with public water systems that do not address infrastructure concerns, such as drinking water related illness, inadequate treatment, and exposure to lead. Some water systems do not qualify for DWSRF funding because of existing technical, managerial, or fiscal management shortcomings and may remain in violation of state and federal law or postpone necessary improvements when they do not qualify.

Community members served by public water systems have little control over the nuanced requirements within the application for DWSRF funding. While individuals in overburdened communities, vulnerable populations, and tribal communities may have health concerns with their drinking water, the public water system is ultimately responsible for making sure it meets regulatory requirements and makes repairs to the system to avoid future problems. Relying on the public water systems to address infrastructure needs may perpetuate negative health impacts if the system continues to postpone maintenance such as necessary repairs or upgrades.

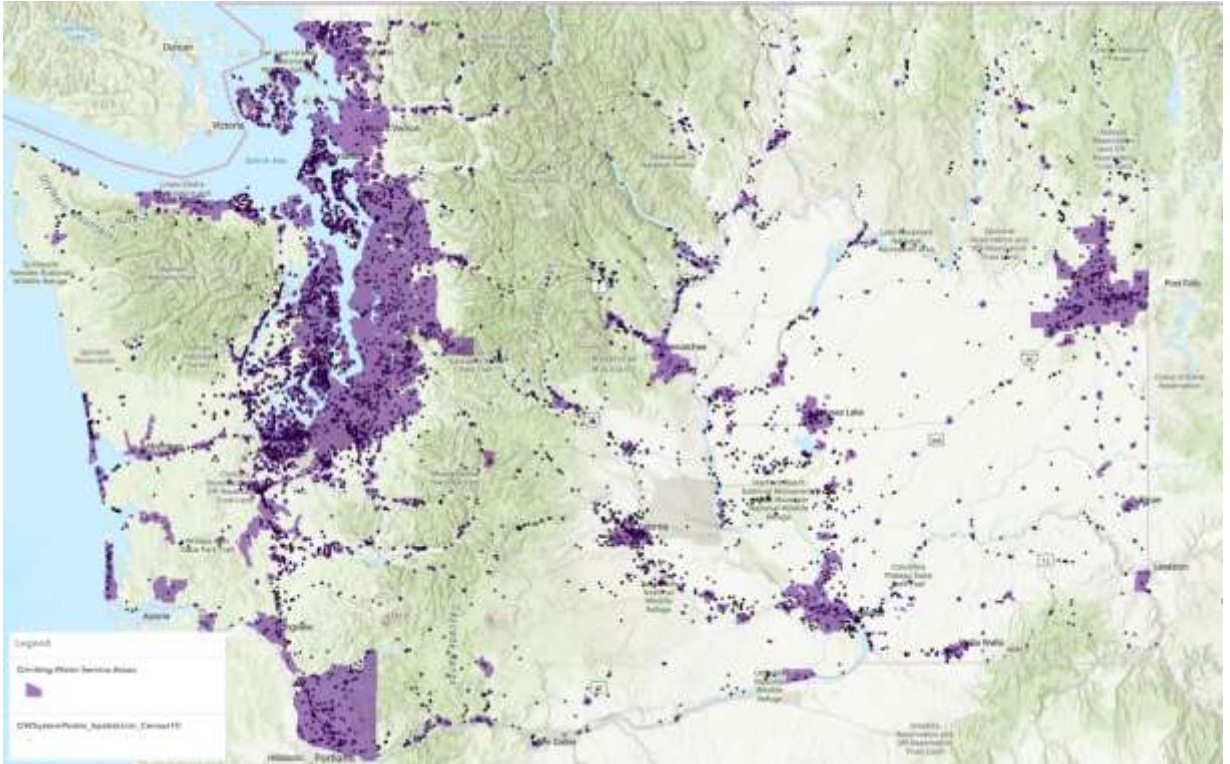
Section 2

Identify Overburdened Communities and Vulnerable Populations

1. Identify the geographic area(s) where there may be environmental and health impacts as a result of the agency action.

To identify geographic areas impacted by this rule, communities served by [Group A public water systems](#)²⁶ helped guide the scope of the EJA because DWSRF funds projects to improve Group A public water systems. Communities served by [Group B water systems](#)²⁷ or private wells were not included because they are not typically eligible for DWSRF. There are approximately 4,529 Group A public water systems in Washington State serving over 6.2 million people. Below is a map showing the Group A public water system service areas in Washington State (highlighted in

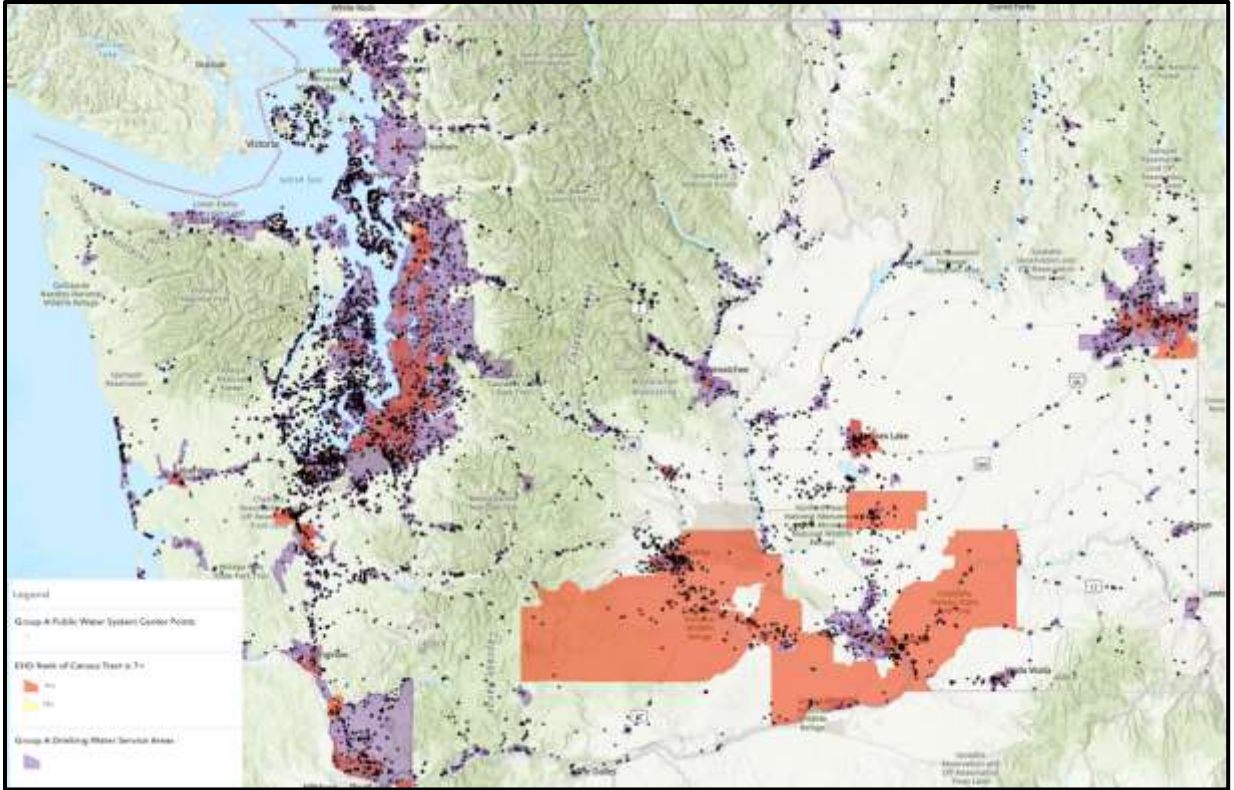
purple) and the center point of all Group A systems (black dots).



2. Describe overburdened communities identified within the geographic area(s) where there may be environmental and health impacts as a result of the agency action.

To describe overburdened communities where there may be environmental and health impacts from this rule, DOH identified the counties with a high concentration of Group A public water systems where a large percentage of census tracts within that county have an [Environmental Health Disparities \(EHD\)](#)²⁸ ranking of 7 or more. Counties that had at least 200 Group A public water systems **and** where at least 30% of the census tracts within that county ranked 7+ were identified to drive community engagement efforts. These include Grant, King, Pierce, and Yakima counties. Below is a map showing census tracts that have an EHD ranking of 7 or more (highlighted in orange), the location of Group A public water system service areas (highlighted in purple), and the center point of all Group A systems (black dots).

County	Group A Public Water System	Total Population	Tribal Lands Represented	% Census Tracts with EHD of 7+
Grant	234	100,129	Colville	31%
King	217	2,249,622	Snoqualmie, Muckleshoot, Puyallup	54%
Pierce	378	907,898	Muckleshoot, Puyallup, Nisqually	54%
Yakima	213	256,185	Yakama	75%



The information below was derived from the [Washington Tracking Network](#)²⁹.

Grant County has 234 Group A public water systems and a total population of 100,129. Of the population, 44% are people of color, predominately Hispanic (43%), and 51% is white. Within the 16 census tracts, 31% have an EHD rank of 7 or more. Census tracts within Grant County average in the 84th percentile for socioeconomic factors, where 36% of the population is living in poverty, 33% experience unaffordable transportation, 22% experience unaffordable housing, 6% experience unemployment, 15% have limited English proficiency, and 23% have no high school diploma. The Colville tribal lands intersect with Grant County boundaries.

King County has 217 Group A public water systems and a total population of 2,249,622. Within the 395 census tracts, 54% have an EHD rank of 7 or more. Census tracts within King County average in the 49th percentile for socioeconomic factors, where 18% of the population is living in poverty, 20% experience unaffordable transportation, 33% experience unaffordable housing, 4% experience unemployment, 11% have limited English proficiency, and 7% have no high school diploma. The Snoqualmie, Muckleshoot, and Puyallup tribal lands intersect with King County boundaries.

Pierce County has 378 Group A public water systems and a total population of 907,898. Of Within the 173 census tracts, 54% have an EHD rank of 7 or more. Census tracts within Pierce County average in the 55th percentile for socioeconomic factors, where 23% of the population is living in poverty, 21% experience unaffordable transportation, 34% experience unaffordable housing, 5% experience unemployment, 6% have limited English proficiency, and 9% have no

high school diploma. The Puyallup, Muckleshoot, and Nisqually tribal lands intersect with Pierce County boundaries.

Yakima County has 213 Group A public water systems and a total population of 256,185. Within the 44 census tracts, 75% have an EHD rank of 7 or more and 20% of the census tracts have an EHD of 10. Census tracts within Yakima County average in the 89th percentile for socioeconomic factors, where 42% of the population is living in poverty, 23% experience unaffordable transportation, 29% experience unaffordable housing, 7% are unemployed, 16% have limited English proficiency, and 28% do not have a high school diploma. The Yakama tribal lands intersect with Yakima County boundaries.

3. Describe vulnerable populations identified within the geographic area(s) where there may be environmental and health impacts as a result of the agency action.

DOH identified vulnerable populations potentially impacted by this rule, using indicators including percent of population as [people of color](#), [socioeconomic factors](#), [cancer mortality](#), [percent of population under 5 years old](#) and percent of population as [migrant farm labor](#). Counties ranking the highest in many of these indicators include Yakima, Adams, Franklin, and Grant County. The information below is from the [Washington Tracking Network](#)³⁰.

County	% Population are People of Color	Socioeconomic Factors Average Percentile	Cancer Mortality Average Percentile	% of Population are Under 5 Years Old	% Population are Migrant Farm Workers
Yakima	59%	89th	60th	8%	16%
Adams	58%	84th	80th	9%	27%
Franklin	55%	75th	38th	8%	38%
Grant	44%	84th	50th	7%	26%

In Yakima County, 59% of the population are people of color, predominately Hispanic (52%), and 41% is white. Census tracts within Yakima County average in the 89th percentile for socioeconomic factors, where 42% of the population is living in poverty, 23% experience unaffordable transportation, 29% experience unaffordable housing, 7% experience unemployment, 16% have limited English proficiency, and 28% do not have a high school diploma. Yakima County census tracts average in the 60th percentile for cancer related deaths, 16% of the population work as migrant farm labor, and approximately 8% of the population consists of children under 5 years old. There are 213 public water systems in Yakima County and a total population of 256,185 residents.

In Adams County, 58% of the population are people of color, predominately Hispanic (55%), and 42% is white. Census tracts within Adams County average in the 84th percentile for socioeconomic factors, where 45% of the population is living in poverty, 36% experience unaffordable transportation, 24% experience unaffordable housing, 6% experience unemployment, 22% have limited English proficiency, and 28% do not have a high school diploma. Adams County census tracts average in the 80th percentile for cancer related deaths, 27% work as migrant farm labor, and approximately 9% of the population consists of children under 5 years old. There are 42 public water systems in Adams County and a total population of 20,450 residents.

In Franklin County, 55% of the population are people of color, predominantly Hispanic (50%), and 36% are white. Census tracts within Franklin County average in the 75th percentile for socioeconomic factors, where 32% of the population is living in poverty, 26% experience unaffordable transportation, 23% experience unaffordable housing, 6% experience unemployment, 22% have limited English proficiency, and 23% do not have a high school diploma. Franklin County census tracts average in the 38th percentile for cancer related deaths, 38% of the population works as migrant farm labor, and approximately 8% of the population consists of children under 5 years old. There are 71 public water systems in Franklin County and a total population of 96,763 residents.

In Grant County, 44% of the population are people of color, predominately Hispanic (43%), and 51% is white. Census tracts within Grant County average in the 84th percentile for socioeconomic factors, where 36% of the population is living in poverty, 33% experience unaffordable transportation, 22% experience unaffordable housing, 6% experience unemployment, 15% have limited English proficiency, and 23% have no high school diploma. Grant County census tracts average in the 50th percentile for cancer related deaths, 26% of the population work as migrant farm labor, and approximately 7% of the population consists of children under 5 years old. There are 234 public water systems in Grant County and a total population of 100,129 residents.

Section 3

Tribal Engagement and Consultation

1. Summarize tribal engagements and invitations for tribal consultation to date.

DOH worked with tribal leaders and representatives to determine the inclusion of water systems owned and operated by federally recognized tribes in the state's definition of "disadvantaged communities." Including tribal systems in the definition would automatically qualify them for loan subsidy through principal forgiveness when accessing DWSRF funding.

On 9/13/2023, an overview of the rulemaking was presented at the DOH Monthly Tribal Meeting by the DWSRF Program Manager.

On 11/6/2023, a Dear Tribal Leader Letter (Appendix A) was sent including an invitation to an initial Tribal Listening Session. The Tribal Listening Session invitation and a copy of the letter was also sent to 111 tribal water system operators (regulated by the EPA).

On 11/27/2023, a Tribal Listening Session was held. The goal of the session was informal collaboration to provide an overview of the DWSRF program and the disadvantaged community rulemaking and hear tribal input on whether tribal water systems should be included in the definition of disadvantaged communities, automatically qualifying tribal public water systems for loan principal forgiveness under DWSRF. The tribal representatives present shared that tribes should be included in the definition of disadvantaged community under this rulemaking. One tribal leader was present at the Tribal Listening Session and no request for formal consultation was made.

On 12/5/2023, the Department of Health Tribal Policy Executive Director updated the [American Indian Health Commission](#)³¹ delegates on the rulemaking and asked if there was any request for roundtables or formal consultation. There was no request for formal consultation.

On 12/5/2023, the Department of Health Equity and Social Justice Strategist for Tribal Relations received a request from representatives of the Yakama Nation for a copy of the Tribal Listening Session Slides. A virtual meeting was held on 12/18/24 with DOH and representatives of Yakama Nation to review the rulemaking and discuss what an updated definition of disadvantaged communities that included tribal water systems would mean.

On 2/12/2024, an informational Dear Tribal Leader Letter (Appendix B) was sent including information about the tribal engagements thus far, the feedback heard, and the intention to include tribes in the definition of “disadvantaged communities” under this rulemaking.

2. Describe likely impacts to tribal rights and resources associated with this action.

If the state's definition of "disadvantaged communities" included water systems that are owned and operated by federally recognized tribes, those water systems would automatically qualify for loan subsidy through DWSRF. If tribal public water systems are not part of the definition, they would have to satisfy extra conditions to qualify as disadvantaged communities for loan subsidies with principal forgiveness.

The availability of DWSRF loan principal forgiveness opportunities would allow eligible tribal water systems serving residential connections to update critical drinking water infrastructure while limiting the cost burden of improvements on tribal communities. Drinking water system improvements will benefit community access to safe and reliable drinking water.

At the Tribal Listening Session, tribal representatives shared a concern about the inaccuracy of county and census level data on tribal lands. Therefore, without the inclusion of tribal lands in the state definition of disadvantaged communities, tribal systems applying for DWSRF funding may have difficulty qualifying for loan subsidy.

3. Describe any plans for ongoing and/or future tribal consultation.

Washington State DWSRF plans to work closely with the EPA (the regulatory authority over tribal owned public water systems) to coordinate with tribal public water systems in Washington State. Ongoing communication and outreach are crucial to keep tribal water systems informed of state funding opportunities to improve their infrastructure.

Section 4

Community Engagement Summary

- 1. Summarize engagement with people from overburdened communities and vulnerable populations to date.**

Several methods of engagement with the communities described in the two previous sections were used:

Public Water System Owner/Operator Survey

The purpose of the Public Water System Owner/Operator Survey was to get direct feedback from the entities who are eligible to apply for DWSRF funding. The survey asked the public water system to describe the most important factors to consider when prioritizing principal forgiveness to disadvantaged communities within their service area. Additionally, the survey asked what community leaders, groups, or individuals to contact to engage with the community each water systems serves directly. The survey was broadly advertised in the [Drinking Water Advisory Group](#)³², [ODW Now Newsletter](#)³³, listed on the DWSRF website, and included in all presentations to public water systems from September – December 2023. The public water system survey had 45 responses (not all water system respondents served overburdened communities or vulnerable populations).

Community Survey

The purpose of the Community Survey was to ask for feedback directly from individuals receiving water from public systems to understand what barriers people face in accessing safe drinking water, and to identify community leaders, groups, or individuals to contact for more direct engagement on this rule. The survey asked for optional details about the respondent, including what county they live in and if it is a rural or urban setting, their race and gender, whether they identify as LGBTQ+ or as a person with a disability, and their total gross annual income. This survey was broadly advertised in the Drinking Water Advisory Group, ODW Now Newsletter, listed on the DWSRF website, and included in all presentations to public water systems from September – December 2023. The community survey had 3 responses, all from individuals representing geographic areas considered overburdened or vulnerable.

Virtual Listening Sessions

Three statewide virtual listening sessions were held in October, November, and December 2023. The purpose of the listening sessions was to provide an overview of the rulemaking and hear feedback about the definition and criteria used to determine what communities should qualify as disadvantaged. Listening session information and registration was broadly advertised in the Drinking Water Advisory Group, ODW Now Newsletter, listed on the DWSRF website, in the [Environmental Justice Assessment Notification](#)³⁴, and included in all presentations to public water systems from September – December 2023. A total of 4 people attended the community listening sessions, including one public water system, one community organization representative, one tribal community representative, and one Kitsap County resident.

Direct Outreach and Feedback

A call for participation in the surveys or listening sessions was sent directly to 54 community organizations who work directly with overburdened communities and vulnerable populations. One virtual meeting was held with a community action group in the Yakima region to give an in-depth overview of the rule and hear feedback about the drinking water concerns in the community of Mabton. Staff attended an in-person community listening session in Mabton, hosted by a community group to address drinking water quality concerns. Staff also attended a

community listening session in West Plains, hosted by a nonprofit organization to address PFAS concerns.

DOH received feedback about the rule through:

- Direct emails:
 - One from a public water system.
 - One from a non-profit water coalition.
 - One from a community member.
- Phone calls:
 - One from a public water system.
 - One tribal water system consultant.
- Formal letter:
 - One letter prepared in collaboration by several large public utilities in Western Washington with feedback about the disadvantaged community definition and considerations for criteria to determine qualification.

2. Summarize information received from people from overburdened communities and vulnerable populations.

From all feedback received through these community engagement efforts, the following were common trends and considerations for the disadvantaged community definition and criteria:

Alternative ways to assess economic hardships and “affordability” of water.

Historically, DWSRF has used median household income (a county-level estimate), to determine how affordable a water system’s rates are, and as the sole indicator for disadvantaged community status when awarding subsidy. The primary feedback heard during community engagement was median household income is not representative of individual communities and public water system service areas or specific project areas. Nearly all respondents urged DWSRF to use alternative indicators to assess economic hardships of communities whose public water system is applying for DWSRF funding. Suggestions for alternative indicators included cost of living, poverty level, unemployment, and fixed income to determine the economic burdens of a community.

Use community characteristics and indicators to determine what it means to be “disadvantaged.”

Respondents expressed that DWSRF should assess the *residents* served by the drinking water system project area when issuing DWSRF funding and loan subsidy. Some public water systems expressed the need to evaluate specific communities where an improvement will have an impact to allow opportunity for loan principal forgiveness in larger municipalities. One community respondent stated that the residents served by the public water system should directly benefit from the financial incentives – not just the utility at large. When awarding principal forgiveness, it was recommended to consider community-level data that includes indicators like unhoused populations, housing type and availability, living conditions, age of residents, historically marginalized groups, and economically disadvantaged populations.

However, there were differing opinions on the inclusion of communities of color as an indicator for disadvantaged community status, with some suggesting its prioritization and others discouraging the use of race as an indicator.

Other, less common feedback:

Some respondents, primarily those representing public water systems, encouraged using factors related to the water system operation itself to determine disadvantaged community status, such as number of connections, number of customers, current revenue, capital reserves, size and type of system, ownership, and type of staff (volunteers, board, full-time employees, or satellite operators/management agencies).

3. Describe plans for ongoing engagement with people from overburdened communities and vulnerable populations.

There is no current plan to engage directly with individual people in overburdened communities and vulnerable populations until the next rulemaking process for DWSRF. DWSRF engages directly with public water systems because they are the eligible entity to access funds through the program. DWSRF does not have the capacity to engage with individual people served by water systems outside of rulemaking efforts. Any feedback heard from public water systems will be considered, as there will be ongoing adjustments to the criteria used to identify disadvantaged communities.

Summary of Section 3 and 4 of how information received from people from overburdened communities and vulnerable populations informed decision-making about this action.

The draft rule language will reflect significant changes to the definition of disadvantaged communities based on feedback heard during community and tribal engagement efforts. The current rule language, which will be revised, reads:

WAC 246-296-020(9) "Disadvantaged community" means the service area of a proposed project within a public water system where the project will result in: (a) Water rates that are more than one and one-half percent of the [median household income] of the service area; or (b) Restructuring, when one or more public water systems are having financial difficulties.

The proposed definition under this rulemaking reads:

WAC 246-296-020(9) "Disadvantaged community" means a qualifying service area of a project serving residential connections within a public water system that is disproportionately impacted by economic, health, and environmental burdens. Potential qualifying areas will be assessed by indicators established in state guidance including population served, social vulnerability, environmental health disparities, and economic hardship. A service area of a project serving residential connections within a public water system owned and operated by a federally recognized tribe is considered a disadvantaged community.

The proposed definition considers community characteristics and focuses on those disproportionately impacted by economic, health, and environmental burdens. The proposed definition removes reference to median household income, and instead outlines a variety of indicators and options for a project to qualify as serving a disadvantaged community. Indicators included in the proposed definition will focus on population served, social vulnerability, environmental health disparities, and economic hardship. Public water systems owned and operated by federally recognized tribes have been added to the proposed definition, automatically qualifying them for loan subsidy through DWSRF.

The proposed definition will be left broad, rather than specifically outlining criteria and thresholds for disadvantaged community status. The proposed criteria will be updated annually and outlined in state guidance published on the DWSRF webpage³⁵. This is to stay flexible in the criteria used based on available funding each year, and to best allocate subsidy opportunities to the communities most in need.

Section 5

Strategies to Address Environmental Harms and Equitably Distribute Environmental Benefits

1. Which of the following strategies will the agency pursue to eliminate, reduce, or mitigate environmental harms and equitably distribute environmental benefits (check all that apply):

- Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations;
- Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations;
- Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations;
- Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action;
- Prioritizing equitable distribution of resources and benefits to overburdened communities;
- Promoting positive workforce and job outcomes for overburdened communities;
- Meeting community needs identified by the affected overburdened community;
- Modifying substantive regulatory or policy requirements; and
- Any other mitigation techniques, including those suggested by the Environmental Justice Council, the Office of Equity, or representatives of overburdened communities and vulnerable populations.

2. Briefly describe the proposed method/approach for each strategy selected in Section 5, Question 1.

Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations.

By updating the definition of disadvantaged communities to be broader and more inclusive, opportunities for funding subsidies will be available to public water systems who serve communities experiencing environmental health disparities, social vulnerabilities, and economic hardships. This action will not add to cumulative environmental health impacts.

Providing equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action.

Effort was put into prioritizing engagement with public water systems, community groups, and individuals in areas identified as overburdened and vulnerable. Feedback and guidance from community members and Tribal representatives was incorporated into the revised definition of disadvantaged communities. The agency will continue to engage with these communities in future rulemaking under DWSRF.

Prioritizing equitable distribution of resources and benefits to overburdened communities.

This rulemaking increases the number of public water systems that will qualify for loan subsidies by focusing on the characteristics of the population served by water systems, rather than the financial capacity of the utility itself. DWSRF will map areas considered disadvantaged under the new rule and identify the public water systems that serve those communities to better prioritize the distribution of technical assistance and promote funding opportunities.

3. Describe additional strategies the program has identified to eliminate, reduce, and/or mitigate harms and equitably distribute benefits.

DWSRF will identify public water systems serving disadvantaged communities under the new criteria. Systems with a known history of compliance issues, critical infrastructure needs, or who have applied for DWSRF and been ineligible in the past will be prioritized for allocation of technical assistance resources to help build managerial, financial, or technical capacity, to gain eligibility for DWSRF funding in the future, or to consider other measures such as system rehabilitation or consolidation.

4. If the agency determines that it does not have the ability or authority to eliminate, reduce, or mitigate environmental harms caused by a significant agency action, or does not have the ability or authority to address the equitable distribution of environmental benefits, provide a clear explanation of why it has made that determination.

The agency took multiple strategies to eliminate, reduce, or mitigate environmental harms and equitably distribute environmental benefits, as described in questions 1 & 2.

5. Identify performance measures or indicators (recommended 3-5) that can be used to track the equitable distribution of environmental benefits and/or the elimination, reduction, or

mitigation of environmental harms for overburdened communities, vulnerable populations, or tribes.

Mapping of Funding Allocation

DWSRF plans to map census tracts that meet the criteria of disadvantaged communities. This base map will be used to analyze where a proposed DWSRF project is located to assess if a water system applying for funding serves a disadvantaged community as defined in this rule.

Mapping of Technical Assistance Resource Distribution

DWSRF will map public water systems currently receiving free technical assistance and evaluate the community characteristics of the populations they serve. We will also identify public water systems serving disadvantaged or overburdened communities with a known history of compliance issues, critical infrastructure needs, or who have applied for DWSRF and been ineligible in the past. Those systems will be prioritized for allocation of technical assistance resources to help them build managerial, financial, or technical capacity to gain eligibility for DWSRF funding in the future.

Annual Reporting

Each year, DWSRF will evaluate all funding, subsidy, and technical assistance distributed to public water systems and describe the community characteristics of the populations served. Allocation of funding and subsidy are specific for each funding source. EPA has requirements about how much funding must go to disadvantaged communities and they require annual reporting of funding distribution. DWSRF would like to apply the same model to technical assistance offered to public water systems and be proactive with outreach efforts to encourage struggling systems serving disadvantaged communities to apply for DWSRF for improvement needs.

APPENDIX A: DEAR TRIBAL LEADER LETTER #1



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
DIVISION OF ENVIRONMENTAL PUBLIC HEALTH
PO Box 47820 • Olympia, Washington 98504-7890
Tel: 360-236-3000 • 711 Washington State Relay

November 6, 2023

Greetings Honorable Tribal Leaders and Tribal Partners:

SUBJECT: Definition and criteria of “disadvantaged communities” under Drinking Water State Revolving Fund

In accordance with chapter [43.376 RCW](#), the [Washington State Centennial Accord of 1989](#), and [DOH Consultation and Collaboration Procedure](#), we are writing today to invite collaboration with tribal leaders and tribal environmental and water officers on a rulemaking for chapter [246-296 WAC](#)- Drinking Water State Revolving Fund (DWSRF) Loan Program to develop a definition and criteria for “disadvantaged communities” as required by the federal Bipartisan Infrastructure Law (BIL). A draft agenda of the virtual listening session is attached to this letter.

Monday, November 27, 2023 - 3:00 PM to 5:00 PM

<https://us02web.zoom.us/j/86103994965?pwd=VGxqbzFPMIE3UUY3SFJLMIA4OEpQQT09>

About this Rulemaking

The Washington State Department of Health (DOH) has recently adopted an updated emergency rule, [WSR 23-18-044](#), August 30, 2023. We are evaluating these changes and will consider permanently adopting these amendments to meet BIL requirements. More information about the rulemaking process can be found on [the DWSRF emergency rulemaking website](#).

About the DWSRF

[The DWSRF Loan Program](#) is a federally funded program that provides low-interest loans to help eligible public water systems build, repair, and redesign public drinking water infrastructure. Tribal entities are eligible to receive DWSRF money for drinking water infrastructure projects provided the proposed project has not already received assistance from the national set-aside for Indian tribes.

For additional information and to provide written feedback, contact Mike Means, Capacity Development and Policy Director, Office of Drinking Water at (360) 236-3178 or mike.means@doh.wa.gov. Please contact Candice Wilson, our agency’s Tribal Policy Director, at 260-819-7626 or candice.wilson@doh.wa.gov if you have tribal affairs-related questions.

Sincerely,

Handwritten signature of Kay Rottell in black ink.

Kay Rottell
Deputy Director, Office of Drinking Water

cc: Umair A. Shah, MD, MPH, Secretary of Health, Department of Health
Candice Wilson, Quatz'tenaut (Lummi), Tribal Policy Director, Department of Health
Jessica Todorovich, Chief of Staff, Department of Health
Kristin Peterson, Chief of Policy, Planning & Evaluation, Department of Health
Elizabeth Perez, Chief of Public Affairs and Equity, Department of Health
Kristopher Holiday, Chief of Strategic Partnerships, Department of Health
Lacy Fehrenbach, Chief of Prevention, Safety and Health, Department of Health
Lauren Jenks, Assistant Secretary of Environmental Public Health Division, Department of Health

APPENDIX B: DEAR TRIBAL LEADER LETTER #2



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
OFFICE OF DRINKING WATER

PO Box 47822 • Olympia, Washington 98504-7822

Tel: (360) 236-3100 • Fax: (360) 236-2253 • 711 Washington Relay Service

February 12, 2024

Greetings Honorable Tribal Leaders and Tribal Partners:

SUBJECT: Informative- Disadvantaged Communities Rulemaking Follow Up

I am writing today to provide an update about the Washington State Department of Health rulemaking to update the definition and criteria “disadvantaged communities” under the [Drinking Water State Revolving Fund](#). Please see the previous Dear Tribal Leader Letter dated November 6, 2023 for more information about this rulemaking effort.

The feedback from tribal representatives shared during our November 27, 2023 listening session and during the informal comment period is that tribal public water systems should be included in the definition of disadvantaged communities. The listening session slides and meeting notes can be provided upon request.

Based on this feedback, we are prepared to proceed with including tribes in the definition of disadvantaged communities. This would mean tribal public water systems serving residential connections that apply and are approved for loans through the Washington State Drinking Water State Revolving Fund program would automatically qualify for loan principal forgiveness.

We are in the informal comment period until March 1, 2024. Informal comments can be submitted to DWSRF@doh.wa.gov or by contacting us at 564-233-1799. We anticipate the draft rule language and environmental justice assessment will be [published here](#) in May 2024.

If you have additional questions please contact Chelsea Cannard, Drinking Water State Revolving Fund Public Health Advisor, at 564-233-1799 or chelsea.cannard@doh.wa.gov. For tribal relations issues, please contact Candice Wilson, Executive Director of Tribal Public Health and Relations, at 360-819-7626 or candice.wilson@doh.wa.gov.

Sincerely,

Holly R. Myers
Director, Office of Drinking Water
Environmental Public Health
Washington State Department of Health

cc: Umair A. Shah, MD, MPH, Secretary of Health, Department of Health

Candice Wilson, Quatz'tenaut (Lummi), Executive Director of Tribal Public Health and Relations, Department of Health

Jessica Todorovich, Chief of Staff, Department of Health

Kristin Peterson, Chief of Policy, Planning & Evaluation, Department of Health

Elizabeth Perez, Chief of Public Affairs and Equity, Department of Health

Kristopher Holiday, Chief of Strategic Partnerships, Department of Health

Lacy Fehrenbach, Chief of Prevention, Safety and Health, Department of Health

Lauren Jenks, Assistant Secretary of Environmental Public Health Division, Department of Health

¹ Washington’s Environmental Justice Law (HEAL Act)

<https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true>

² Chapter 246-296 WAC <https://apps.leg.wa.gov/WAC/default.aspx?cite=246-296&full=true&pdf=true>

³ Bipartisan Infrastructure Law (BIL) <https://doh.wa.gov/sites/default/files/2023-03/PLAW-117publ58.pdf>

⁴ RCW 34.05.328

<https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328#:~:text=PDF%20RCW%2034.05.328%20Significant%20legislative%20rules%2C%20other%20selected,objectives%20of%20the%20statute%20that%20the%20rule%20implements%3B>

⁵ RCW 70A.02.060 <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.060>

⁶ Drinking Water State Revolving Fund Program Rulemaking | Office of Financial Management

<https://ofm.wa.gov/drinking-water-state-revolving-fund-program-rulemaking>

⁷ Notification of Environmental Justice Assessment on Significant Rulemaking (wa.gov)

<https://doh.wa.gov/sites/default/files/2023-08/300-028.pdf?uid=64d3c4341303f>

⁸ Drinking Water State Revolving Fund (SRF) Loan Program | Washington State Department of Health

<https://doh.wa.gov/community-and-environment/drinking-water/regulation-and-compliance/rules/drinking-water-state-revolving-fund-srf-loan-program>

⁹ WSR23-11-003.pdf (wa.gov) <https://doh.wa.gov/sites/default/files/2023-05/WSR23-11-003.pdf>

¹⁰ Executive Order 14008 “Tackling the Climate Crisis at Home and Abroad”

<https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad>

¹¹ Justice40 initiative <https://www.whitehouse.gov/environmentaljustice/justice40/>

¹² Bipartisan Infrastructure Law (BIL) <https://www.epa.gov/newsreleases/statement-administrator-regan-bipartisan-infrastructure-deal>

¹³ 1996 Safe Drinking Water Act (SDWA) [https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter6A-](https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter6A-subchapter12&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU0Mi1zZWN0aW9uMzAwZg%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim)

[subchapter12&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU0Mi1zZWN0aW9uMzAwZg%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim](https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title42-chapter6A-subchapter12&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU0Mi1zZWN0aW9uMzAwZg%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim)

¹⁴ EPA Bipartisan Infrastructure Law: State Revolving Funds Implementation Memorandum March 2022

<https://www.epa.gov/system/files/documents/2022-03/bil-srf-memo-fact-sheet-final.pdf>

¹⁵ Washington State Drinking Water State Revolving Fund <https://doh.wa.gov/community-and-environment/drinking-water/water-system-assistance/drinking-water-state-revolving-fund-dwsrf>

¹⁶ WSR 23-05-069 <https://doh.wa.gov/sites/default/files/2023-02/SRFLoanTermsCR103E.pdf>

¹⁷ WSR 23-06-064 <https://doh.wa.gov/sites/default/files/2023-03/LSL-CR103E.pdf>

¹⁸ WSR 23-18-044 [https://doh.wa.gov/sites/default/files/2023-09/WSR 23-18-044 SRF E-Rule.pdf](https://doh.wa.gov/sites/default/files/2023-09/WSR%2023-18-044%20SRF%20E-Rule.pdf)

¹⁹ WSR 24-02-060 [https://doh.wa.gov/sites/default/files/2024-01/WSR24-02-060DWSRF-](https://doh.wa.gov/sites/default/files/2024-01/WSR24-02-060DWSRF-LoanCR103Ecombined.pdf)

[LoanCR103Ecombined.pdf](https://doh.wa.gov/sites/default/files/2024-01/WSR24-02-060DWSRF-LoanCR103Ecombined.pdf)

²⁰ "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to:

a) Communities designated by DOH based on cumulative impact analyses that identifies those communities highly impacted by fossil fuel pollution and climate change in Washington; or

b) A community located in census tracts that are fully or partially on "Indian country" as:

1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

²¹ "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to:

(a) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and

(b) Sensitivity factors, such as low birth weight and higher rates of hospitalization.

(c) Vulnerable populations" includes, but is not limited to:

1) Racial or ethnic minorities;

2) Low-income populations;

3) Populations disproportionately impacted by environmental harms; and

4) Populations of workers experiencing environmental harms.

²² RCW 70A.02: Environmental Justice Law <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02>

²³ 40 C.F.R. § 7.35 <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-7/subpart-B/section-7.35>

²⁴ Title VI of the Civil Rights Act of 1964 <https://www.justice.gov/crt/fcs/TitleVI>

²⁵ "Drinking Water and Public Health in the United States," American Public Health Association

<https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2020/01/13/drinking-water-and-public-health-in-the-united-states>

²⁶ WAC 246-290-020 <https://app.leg.wa.gov/WAC/default.aspx?cite=246-290-020>

²⁷ WAC 246-291-005 <https://app.leg.wa.gov/WAC/default.aspx?cite=246-291-005>

²⁸ Washington Environmental Health Disparities Map Cumulative Impacts of Environmental Health Risk Factors Across Communities of Washington State https://doh.wa.gov/sites/default/files/2022-07/311-011-EHD-Map-Tech-Report_0.pdf?uid=64d133709f018

²⁹ Washington Tracking Network <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn>

³⁰ Washington Tracking Network <https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn>

³¹ American Indian Health Commission <https://aihc-wa.com/>

³² Washington State Department of Health, Office of Drinking Water, Drinking Water Advisory Group <https://doh.wa.gov/community-and-environment/drinking-water/related-links/drinking-water-advisory-group>

³³ Washington State Department of Health, Office of Drinking Water, ODW Now Newsletter

<https://doh.wa.gov/community-and-environment/drinking-water/odw-newsletter>

³⁴ DWSRF Rulemaking Environmental Justice Assessment Notification <https://doh.wa.gov/sites/default/files/2023-08/300-028.pdf?uid=64d3c4341303f>

³⁵ DWSRF Webpage <https://doh.wa.gov/community-and-environment/drinking-water/water-system-assistance/drinking-water-state-revolving-fund-dwsrf>