

Drinking Water Loan Account Handbook



**State of Idaho
Department of Environmental Quality**

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General Policy Statements

1. Loans from the Drinking Water Loan Account may be offered for up to 100% of eligible project costs under state and federal regulations, subject to availability of loan funds. Technically, the Idaho Department of Environmental Quality (DEQ) purchases debt from funding recipients; however, the term “loan” is used for readability purposes.
2. The length of the repayment period may vary according to the expected life of the project being financed. However, all repayment obligations must be fully paid off (amortized) no later than 30 years from project completion. Interest will accrue from the date funds are disbursed.
3. Long-term commitments for future funding will not be made. When deemed necessary to meet state public health and/or funding objectives, partial or phased funding may be offered for a project without guarantee of future funding.
4. Available resources will be committed to new loans in a timely manner.
5. Without formal written advance approval, costs incurred by an applicant before an assistance agreement is entered into will generally not be considered eligible. See “allowable costs” on page 6 for exceptions.
6. No disbursements will occur until application requirements are met.
7. The Idaho Department of Environmental Quality (DEQ) has established a policy for determining the rate of interest to be charged on loans from the drinking water loan accounts. The Policy for Determining Interest Rates on Loans from the Water Pollution Control and Drinking Water Loan Accounts (PM12-01) is found on DEQ’s website at <http://www.deq.idaho.gov/laws-rules-etc/deq-policies/>.

Overview

Using funds provided by the United States Environmental Protection Agency (EPA), the Idaho Department of Environmental Quality (DEQ) offers loans to qualified water systems to improve their drinking water facilities. These loans come from the Drinking Water State Revolving Fund (DWSRF) Program.

The list below outlines the steps a public water system owner goes through to receive a DWSRF loan.

1. Submit Letter of Interest to get owner on fundable list
2. Receive Confirmation from DEQ that you are on fundable list
3. Pre-application meeting
4. Loan application received
5. Environmental review process initiated

6. Environmental determination issued and published
7. Engineering contract approved
8. Viability certified through technical, financial, and managerial capacity assessment
9. Operator licensure verified
10. Final environmental determination is approved
11. Facility plan approved
12. Offer made
13. Offer accepted
14. Plans and specifications approved
15. Water system protection ordinance (WSPO) and user charge system (UCS) approved
16. Pre-bid conference
17. Bid review checklist completed
18. Authorization to award bid
19. Pre-construction conference
20. Notice to proceed
21. Plan of operation approved
22. Design and construction
23. Operations and maintenance manual approved
24. Final inspection
25. Closeout package
26. Final project review
27. Repayment of loan

This handbook explains what needs to be accomplished at each step in the loan process. In addition, 41 forms accompany the handbook to assist DEQ representatives and the borrower. Some forms are sample letters in Microsoft Word format, which DEQ or the borrower may download and customize to fit their individual situations by inserting the appropriate content where indicated in the letter. The remaining forms are in PDF format, and most are interactive—users can fill out the form electronically by opening the form with the free Adobe Acrobat reader and print a hard copy to submit.

Note: These forms open best in Internet Explorer. For Mozilla Firefox users, you may get a “Please Wait” message and will need to click on the “Open with Different Viewer” prompt on the top right of the screen if the document does not display properly. The forms do not open in Chrome.

1 Pre-Application Conference

Form 1-A, the Pre-Application Conference Checklist, accompanies this section.

The purpose of a pre-application conference is to provide the potential applicant and the Idaho Department of Environmental Quality (DEQ) an opportunity for a face-to-face meeting to discuss the program and its requirements. Appropriate government representatives should attend the pre-application conference.

DEQ shall be represented by its regional office project officer. Other attendees may include DEQ legal, financial, administrative, and public works staff.

Topics of discussion at the pre-application conference should include the following:

- Drinking water grant and DWSRF programs
- Status of the proposed loan on the current priority list of projects approved by DEQ
- Probability of funding for the project
- Roles and responsibilities of all parties
- Necessity for compliance with federal requirements

If the potential applicant intends to submit an application, the requirements and a timetable should be discussed.

The project officer should complete Form 1-A, the Pre-Application Conference Checklist, which should be placed in TRIM (DEQ's document management system). A list of attendees at the pre-application conference should be attached to the checklist.

2 Application Review

Six forms accompany this section:

- Form 2-A, Application for State Revolving Fund Loan
- Form 2-B, Financial Application Form
- Form 2-C, Section 1, Technical Capacity Assessment
- Form 2-C, Section 2, Financial Capacity Assessment
- Form 2-C, Section 3, Managerial Capacity Assessment
- Form 2-D, Application Review Checklist

Application review includes the following actions:

1. Upon receipt of the completed Application for a State Revolving Loan (Form 2-A and Form 2-B) from an applicant, the project officer will review the application for accuracy and completeness.
2. The project officer should complete Sections 1 and 3 of the Water System Capacity Assessment Indicators (Form 2-C).
3. The DEQ state office will complete section 2 of Form 2-C.
4. The project officer should complete the Application Review Checklist (Form 2-D) and provide a recommendation for funding.

5. The project officer should submit the following to the state office, where the final loan determination will be made, and the loan offer will be prepared:
 - a. The completed Application for a State Revolving Loan (Forms 2-A and 2-B)
 - b. The partially completed Idaho DEQ Water System Capacity Assessment Indicators (Form 2-C, Section 1)
 - c. The completed Application Review Checklist (Form 2-D)
 - d. A completed recommendation for funding

3 Offer

Three forms accompany this section:

- Form 3-A, Sample Offer, Acceptance, and Agreement
- Form 3-B, Sample Project Schedule
- Form 3-C, Sample Offer Transmittal

After review of the technical documents, the project officer in the DEQ regional office should submit a recommendation for funding to the state office.

If, after further review by the state office, the application is determined to be accurate and complete and the applicant is assessed to be a good credit risk, an offer (see Form 3-A for a sample) will be prepared. Once an offer is made, the applicant will generally have 60 days to accept the offer, as evidenced by the signature of an authorized representative. A copy of the resolution authorizing the representative to sign the offer must be on file at the DEQ state office.

General Conditions for All Offers

The borrower shall agree to expeditiously initiate and complete the project work for which the loan is made, in accordance with applicable DEQ rules. For purposes of the agreement, DEQ inspection, review, and approval are only for the purposes of compliance with applicable rules. DEQ approval is not a warranty or guarantee.

DEQ will bring to the borrower's attention any obvious defects in the project's design, materials, or workmanship, but all such defects and their correction shall be the responsibility of the borrower and its agents.

Any questions raised by DEQ should be resolved exclusively by the borrower and its agents, who shall remain responsible for the completion and success of the project. The borrower shall agree that it and its agents, employees, and representatives will comply with DEQ rules and other conditions set forth in the loan agreement or any amendment that may be made to the loan agreement.

The proceeds of the loan will be used only for the described project.

The borrower shall agree to comply with applicable state and federal requirements including, but not limited to, the *cross-cutting* authorities.

The borrower should provide evidence in the form of a fee simple title or long-term lease and right of access or easements for real property on which facilities are to be constructed. Clear title,

long-term lease, easement, or access to all real property necessary for the successful operation of the facilities should be guaranteed by the borrower for the useful life of the facilities.

The borrower shall retain and use the services of an engineer currently licensed in Idaho for all project planning, design, and construction oversight, who has liability indemnification in accordance with the “Rules for Administration of Drinking Water Loan Program” (IDAPA 58.01.20.050.05.d).

The borrower shall permit DEQ, or its authorized agents, access to the project work. Additionally, the borrower will ensure that the contractor will provide adequate facilities for access and inspection.

The borrower shall agree to provide DEQ, or its authorized agents, access to all files, records, accounting, and books relating to the management and accountability of the project.

The borrower shall agree to indemnify and hold harmless DEQ, its agents, and its employees from any and all claims, actions, damages, liabilities, and expenses directly or indirectly connected to the borrower or its agents’, employees’, contractors’, or assignees’ actions related to the location, design, construction, operation, maintenance, repair, failure, or deactivation of the project or any part of the project.

Security

The offer will identify the type of security instrument (either a bond or promissory note) that will be issued by the borrower. Such bond or promissory note will be held as security for the loan until the loan has been fully paid. If complete financing for the project has not been secured at the time of the loan request, a complete discussion of how the financing will be finalized (to include impact on user rates) should be included.

All debt instruments received by DEQ must be transmitted to the State Treasurer’s Office for safekeeping. Upon receipt of the final repayment from the borrower, DEQ will issue instructions to the Treasurer’s Office for the return of the debt instrument to the borrower.

Suspension or Termination of the Loan

Pursuant to IDAPA 58.01.20.080, DEQ’s director may, for cause, suspend or terminate, as appropriate, any loan prior to final disbursement.

DUNS Registration

Loan recipient must renew this registration annually.

4 Disbursement Requests and Cost Eligibility

Two forms accompany this chapter:

- Form 4-A, Outlay Report and Request for Reimbursement for Drinking Water Loans
- Form 4-B, Checklist for Reviewing Disbursement Requests

DEQ will supply borrowers with disbursement requests (Form 4-A). Disbursements will be made as costs are incurred.

Requests for disbursement will be processed as quickly as possible by DEQ. Requests must be reviewed to determine eligibility and to ensure that costs are adequately documented. Project officers should review each request in accordance with criteria on the Checklist for Reviewing Disbursement Requests (Form 4-B) and sign the request as indicated.

Upon receipt of the borrower's request, the DEQ regional office project officer will ensure appropriateness of the request and then transmit the request and appropriate supporting documents to the Senior Accountant in the DEQ fiscal office, with a copy to the Loan Officer in the state office. The documents will be reviewed for content and accuracy by the accounting staff and, upon approval, a payment will be prepared and issued. All related documents will become a permanent part of the project file.

Disbursement of the final 10% of the loan funds will not be made until a responsible charge operator (RCO) has been designated who is licensed at or above the classification level of the system. When the RCO is not available, a substitute RCO who is licensed at or above the classification level of the system shall be designated to replace the RCO. Additionally, the final 10% will not be disbursed until a User Charge System and Water System Protection Ordinance have been implemented and any "Special Conditions," detailed in Section V of the Loan Agreement, have been met.

Disbursement of the final 5% of loan funds will not be made until a final review is conducted by DEQ and the following documents are in the project files maintained by DEQ:

- Final construction inspection reports
- Approved final operations and maintenance (O&M) manual
- Engineer's certification that construction was completed in accordance with approved plans and specifications
- Borrower's acceptance of construction
- Project review by DEQ
- A final loan repayment schedule

Allowable Costs

In addition to IDAPA 58.01.22.041 "Determination of Eligibility of Costs," the following interpretations will help to make clear DEQ's position on cost eligibility.

- Some costs incurred prior to the loan being signed have been categorically accepted as allowable (appropriate supporting documentation will still be required):
 1. Costs necessary to prepare a loan application
 2. If delay would push construction into a new building season and incur inflationary increases to the overall project
 3. Borrower must move forward quickly in order to comply with a compliance order
 4. Borrower's match expense for a DEQ planning grant
 5. Cost for non-DEQ funded planning effort that was undertaken to meet a compliance order

6. If costs were incurred to comply with draft or final NPDES permit requirements or with a draft 401 certification that is related to a compliance schedule
 7. If taking early action will result in cost savings (e.g., less mobilization/demobilization costs)
- Connection fees are an eligible expense
 - Start-up costs for new systems are eligible expenses (e.g., permit costs)

5 Review/Approval of Planning Documents and Environmental Reviews

This section of the handbook (Section 5) provides firm direction for State Revolving Fund (SRF) personnel to follow when administering the State Environmental Review Process (SERP), particularly during the initial evaluation of a loan-funded project. The guidance specifically addresses the processes followed when funding types are identified and the conditions under which a project shall be categorically excluded from further environmental review. It also discusses when an Environmental Information Documentation (EID) may be necessary and considers the scope and detail expected in the EID.

The National Environmental Policy Act (NEPA) was passed in 1969 to strike a balance between promoting economic development while protecting environmental quality. However, since the act was passed, the NEPA mandate has become unbalanced toward expanding review procedures and information collecting without discretion as to project nature or magnitude, while concurrently ignoring or minimizing economic, social, and environmental benefits. This is especially applicable in the case of relatively small and essential infrastructure projects such as water and wastewater systems.

Seeking to correct this imbalance, on March 6, 2012, the Council on Environmental Quality (CEQ) released final guidance for agencies on improving the efficiency and timeliness of environmental reviews under NEPA. The guidance strives to reduce the NEPA burden by encouraging efficient environmental reviews and quicker NEPA decisions.

In Idaho, the overwhelming majority of projects funded by the SRF Loan Program are small wastewater projects and drinking water projects.¹ These projects are crucial to protecting human health and the environment through direct improvements in water quality, source water protection, stream enhancements, energy and water efficiency, and the introduction of innovative environmental technologies. These infrastructure improvements are also essential to the economic well-being of our small communities.

To balance any inefficiency in the application of the SERP, and reduce the reporting burden placed on applicants, the DEQ SRF staff shall implement the guidance presented in this section of the SRF handbook.

¹ 92% of the 238 SRF Loan projects funded through 2014 are less than \$10M, while 80% are less than \$5M.

² CEQ, "Memorandum for Heads of Federal Departments and Agencies" (March 6, 2012), *available at* https://www.whitehouse.gov/sites/default/files/microsites/ceq/improving_nepa_efficiencies_06mar2012.pdf.

SERP—A Consultative Process

In accordance with the CEQ findings and recommendations (i.e., “to provide a sufficient and effective SERP process that is tailored to avoid excessive burden”²), the DEQ SERP implementation process shall incorporate and implement the following general items:

- The SRF Program shall recognize that SERP is primarily a consultative and public disclosure process to assist decision-makers, involving grant recipients as well as consulting agencies. An adversarial posture with grant recipients shall be avoided. The grant recipient—or their professional representative—shall be given due respect and equal consideration at all times. The process shall be considered as a “partnership” effort.
- Grant recipients shall be encouraged to submit draft documents for which there are questions. This will enable early DEQ input and direction, thereby avoiding lengthy and labor intensive alterations to “final” documents. This shall be similar to the review process for project plans and specifications.
- The SERP reviewer will consider opinions on potential project impacts offered by the recipient’s professional representatives, other stakeholders, and the public.
- The SERP exists to ensure the protection of human health and the environment.

SERP—Lessons Learned and Minor Projects

1. The 240 small drinking water and wastewater projects constructed by the SRF from program inception through 2014 show overwhelmingly positive human health and environmental results, with little or no negative environmental impacts of note experienced in that time.
2. The existing rules allow for sufficient discretion in interpretation of key terms to give states adequate flexibility when implementing SERP.
3. The DEQ SRF has accumulated sufficient experience and data fulfilling SERP requirements to apply reasoned discretion to cost-effectively implement the SERP rules for SRF projects.
4. For any and all of the potential “Complicating Factors” (e.g., wetlands, floodplains, stream discharges, etc.) associated with our SRF projects through 2014, there were independent processes and permits to ensure these factors are addressed (e.g., Idaho Department of Water Resources well permits, Section 404 permits). These processes/permits control the potential impacts due to the small size of SRF projects.
5. The FONSI/EID procedure—relative to the SRF funding of small drinking water and wastewater systems in Idaho—has resulted in very little value added, while adding significant cost to the projects.
6. Accordingly, the definition of the term “minor” will encompass projects for which agency consultations and mitigation will be addressed by independent regulatory efforts.

Forms

These forms accompany this section:

- Form 5-A, Outline and Checklist for Planning Document
- Form 5-B, DEQ Environmental Review Procedure

- Form 5-C, SERP Scoping Meeting
- Form 5-D, Categorical Exclusion Checklist
- Form 5-E, Outline and Checklist for Environmental Information Documents

Responsibilities

DEQ—DEQ will review and approve planning documents and associated documents. The major objective of this review is to ensure that compliance with the requirements of the following are achieved: the Clean Water Act, as amended; “Rules for Administration of Planning Grants for Drinking Water Facilities” (IDAPA 58.01.22); and “Rules for Administration of Drinking Water Loan Program” (IDAPA 58.01.20). DEQ will strive to ensure that the end product of the planning effort complies with the requirements of the applicable law.

In addition, DEQ will take the following actions:

1. Determine the funding mechanism that will guide the process as early as possible.
2. Review and take action on any state-funded planning grant or SRF loan application-related planning work.
3. Encourage use of an effective public participation program throughout the planning document process, including a full, early public disclosure of sensitive environmental issues. This should include a public process whereby the applicant informs the affected community about the alternatives and provides the opportunity for the community to submit comments prior to selection of a preferred alternative by the governing authority.
4. Monitor progress on preparation of the planning document and hold meetings with the engineer and system owners to identify and resolve problems at an early point in the process (Scoping Meeting). As work on the planning document progresses, DEQ should encourage the applicant to identify important environmental issues, should any exist, and to take whatever steps are necessary to resolve them.
5. Review documents for conformance with environmental requirements. The Outline and Checklist for Planning Document (Form 5-A) and the Outline and Checklist for Environmental Information Documents (Form 5-E) should be used during review to ensure completeness of information.
6. Transmit written comments to the applicant. Review responses to such comments to determine final compliance with state requirements. Meet with the system representatives, if necessary, to resolve outstanding issues.
7. Direct the environmental review process using the DEQ Environmental Review Procedure (Form 5-B), and if applicable, the EID checklist (Form 5-E).

Loan Recipient—As the drinking water system representatives work to complete their planning document, it is their responsibility to:

1. Consult with DEQ on the planning document requirements, including environmental review responsibilities. The applicant should participate in a scoping meeting to identify environmental requirements and use the DEQ-approved Outline and Checklist for Planning Document (Form 5-A), the DEQ Environmental Review Procedure (Form 5-B), the Outline and Checklist for Environmental Information Documents (Form 5-E), and any other applicable guidance materials.

2. Include a discussion of alternatives and recommend a cost-effective and environmentally sound alternative.
3. Ensure that as project alternatives are developed, environmental impacts and associated mitigation costs are considered and become part of the public participation process leading to selection of an alternative.
4. Fulfill the environmental review requirement (following consultation described in item 1 of this list) by either completing documentation for a categorical exclusion or an EID.

6 Plans, Specifications, and Addenda Review

Three forms accompany this section:

- Form 6-A, DWSRF Specifications Insert
- Form 6-B, Checklist for Plans and Specifications Review
- Form 6-C, Plans and Specifications Review Approval Letter

Contractors shall provide copies of all documentation required in Chapter 6 of this handbook to the recipient, who shall maintain the records until 3 years of repayments have occurred.

Form 6-A: Idaho DWSRF Specifications Insert

This is the standard source document for DEQ engineers in each DEQ regional office to inform prospective DEQ loan recipients of the range of legal requirements. To maintain eligibility for the DWSRF, the project specifications shall contain the DWSRF Specifications Insert.

Documents Submitted

The recipient may, at their discretion, require all bidders to submit certain specification inserts from which DEQ only requires final submission from the successful bidder.

Davis Bacon Administration

A number of loan recipients have found it advantageous to utilize the services of grant administrators who are familiar with Davis-Bacon (DB) requirements. These specialists can provide assistance from the initial plans and specifications through contract administration during the course of the project. The costs for retaining grant administrators are loan-eligible (i.e., can be disbursed from the DWSRF loan).

American Iron and Steel (AIS)

1. **General:** In accordance with the current DWSRF Assistance AIS requirements, all of the iron and steel products used in this project shall be produced in the United States, except those iron and steel products for which a waiver has been issued. For any AIS-related questions, contact Jorge Medrano of EPA at (202) 564-1968 Medrano.Jorge@epa.gov.
2. **Waivers:** The statute permits EPA to issue waivers where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel

products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25%.

For more information on obtaining a waiver, access the EPA AIS Guidance, starting on page 11, at: <http://www.epa.gov/sites/production/files/2015-09/documents/ais-final-guidance-3-20-14.pdf>. SRF assistance recipients may apply for a waiver by emailing the completed documentation listed in Appendix 1 of the EPA AIS Guidance to the DEQ project engineer. Once the DEQ engineer determines the application is complete, he or she will forward the application to dwsrfwaiver@epa.gov with a copy to the SRF AIS Coordinator Kevin.McNeill@deq.idaho.gov.

3. **De Minimis Waiver:** Products would be considered eligible for a de minimis waiver if: (1) the sum total of the combined products does not exceed 5% of the total cost of materials for the project; (2) the products are not described in the project specification; and, (3) any single product does not exceed 1% of the total materials cost of the project.
4. **Required AIS Construction Contract Language:** To ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements.
5. **On-site Inspections:** The Owner's representative shall periodically conduct on-site inspections to review the materials compliance logs being maintained by the Contractor to ascertain the completeness of information being recorded. In addition, the Owner's representative shall spot-check stored iron and steel products against the logged information to ensure the consistency and accuracy of the documentation.
6. **Pay Applications:** DWSRF Loan fund reimbursement shall only occur when manufacturer's Letters Certifying Product Compliance with AIS requirements have been received and approved by the Owner or Owner's representative and submitted as supporting documentation for requests for payment for iron and steel products. A sample acceptable manufacturer's letter is included in the SRF spec insert (Form AIS-2). For assistance with reviewing manufacturer product certification letters, contact SRF_AIS@epa.gov with "cert letter review" as the subject.

DEQ P&S Review Responsibilities

DEQ will review and approve construction plans, specifications, and addenda for completeness, adequacy, and compliance with the rules:

1. Conduct design reviews at the 90% level, when deemed appropriate by the DEQ project engineer. In addition, DEQ may conduct in-progress design reviews at 10% and 50% levels, thereby ensuring that preparation of the plan and specifications is in accordance with the approved facility plan and applicable federal and state requirements.
2. Review the plans and specifications to ensure facilitation of project construction and compliance with applicable procurement requirements. Purchasing and bidding must comply with Idaho Code for municipalities and political subdivisions of the state. DEQ engineers may document the review using the Checklist for Plans and

Specifications Review (Form 6-B). This process ensures that the comments resulting from the review are considered and that loan recipients incorporate appropriate changes into the documents.

3. Retain deficient or incomplete plans and specifications and addenda until applicants correct the documents.
4. Notify the applicant, by letter, of plans and specifications approval (Form 6-C) and advise of any additional procurement requirements for the construction of the project.
5. Provide information and participation requirements regarding disadvantaged business enterprises (DBE) for inclusion in specifications.

Form 6-B: Checklist for Plans and Specifications Review

Form 6-B is a standard checklist provided to guide DEQ engineers in each DEQ regional office in their review of SRF-related plans and specifications. Consulting engineers will find this helpful, as it is a good indication of DEQ's expectations.

Form 6-C: Plans and Specifications Review Approval Letter

This is the template for the letter of approval that DEQ will send out after reviewing the project plans and specifications.

Project Sign

A sign may be produced and erected in a prominent location to adequately mark the project. (Signage costs are eligible.) The sign indicates that DEQ is providing funds for the project.

Sign Specifications:

A sign for identification of the project may be installed prior to commencement of construction at a location which is near the project site and accessible for public viewing.

- The sign should be constructed of 4 feet by 8 feet exterior type high-density overlaid plywood or other sign material of equivalent quality and framed with 2 inch by 4 inch wood of suitable grade.
- The DEQ logo should be painted on the sign in a manner similar to the attached detail drawing. The logo should be about 11 inches in diameter.
- The sign should be painted with black or other visible dark lettering on a white background.
- Information specified on the attached detail drawing should be displayed on the sign.
- Lettering should be of professional quality and in accordance with the attached detail drawing; all lettering should be in proportion to the sizes shown.
- Any additional information displayed on the sign should not detract from or displace the information required in the drawing.
- The contractor should provide adequate support for the sign with regard to site conditions and it should be an adequate distance above the prevailing grade to permit public viewing.

- When the construction is complete and accepted by DEQ, the contractor should remove and appropriately dispose of or reuse the sign.
- The cost of preparing and erecting the sign is an eligible cost.

STATE
OF
IDAHO

AN EQUAL EMPLOYMENT
OPPORTUNITY PROJECT



Awarded by
Butch Otter, Governor

DEPARTMENT
OF
ENVIRONMENTAL
QUALITY



DEQ PROJECT NUMBER: _____

DEQ SRF: _____		Elected Official: _____
Local: _____		Engineer: _____
Total: _____		Contractor: _____

7 User Charge System and Water System Protection Ordinance

Two forms accompany this section:

- Form 7-A, Checklist for User Charge System (UCS) and Water System Protection Ordinance (WSPO) Review
- Form 7-B, Sample User Charge System (UCS) and Water System Protection Ordinance (WSPO) Letter

The UCS should be designed to distribute costs equitably among all users and produce sufficient revenue to fund costs of operation, maintenance, replacement, and debt retirement. If bonds are issued to finance construction of the facilities, a covenant for an adequate user charge must be included in the bond documents.

8 Bid Reviews

Three forms accompany this section:

- Form 8-A, Checklist for Reviewing Bid Documents
- Form 8-B, Sample Letter Authorizing Bid Award
- Form 8-C, Checklist for Data Due after Bid Award

DEQ will review bid solicitations and contract documents prior to the award of the construction contract. Bid documents will be reviewed to determine conformance with state and federal requirements. Form 8-A, Checklist for Reviewing Bid Documents, should be completed during

each review. Notification should be provided for deficiencies, and inadequate or incomplete documents may be retained until all deficiencies are corrected.

After reviewing the bids, DEQ may authorize award of the contracts. The authorization may be in the form of a letter, which should contain instructions for arranging a pre-construction conference (Form 8-B). Verbal authorization may be given; however, in all cases, written authorization will be provided prior to the specified last day to award.

Items of Concern Prior to Issuance of the Notice to Proceed

The items listed below have historically been sources of concern in the bidding and awarding process of construction contracts. The explanations below are included to clarify the policies and to ensure AIS and DB model clauses are included in the contract(s).

American Iron and Steel

The loan recipient must include the AIS clause specified in the CWSRF Specification Insert (Form 6-A) in the signed contracts with the successful bidder(s) for the project.

Davis-Bacon Wage Provision Requirement

The loan recipient must include the following documents in the signed contracts between the loan recipient and the successful bidder(s) for the project:

- Either DB model clause I or model clause II from the DEQ website <http://www.deq.idaho.gov/media/60179667/srf-davis-bacon-conditions.pdf> (depending on the type of loan recipient), *must* be included in the signed contracts.
- Latest wage determinations.
(For further information refer to <http://www.gpo.gov/fdsys/granule/USCODE-2010-title31/USCODE-2010-title31-subtitleII-chap13-subchapIII-sec1352/content-detail.html>).

9 Construction Management

Six forms accompany this section:

- Form 9-A, Checklist for Pre-Construction Conference
- Form 9-B, Drinking Water Loan Account Suggested Agenda and Points of Discussion for Pre-Construction Meeting with Contractor
- Form 9-C, Checklist for Construction Dispute Review
- Form 9-D, Evaluation of Change Orders
- Form 9-E, Checklist for Change Order Review
- Form 9-F, Sample Letter Explaining DEQ Involvement with Acquisition of Professional Services and Need for Certificate of Negotiation

To plan, direct, and track the progress of construction, DEQ will be involved in various construction management activities. These may include pre-construction conferences, construction claims, in-process construction inspections, disputes, and change order reviews.

Pre-Construction Conferences

The borrower may schedule a pre-construction conference as soon as possible after the borrower awards the construction contract. The pre-construction conference may be conducted in two sessions:

1. DEQ may conduct the first session, using the Checklist for Pre-Construction Conference (Form 9-A) to ensure that the borrower is aware of the requirements that govern construction activity.
2. The borrower may conduct the second session to ensure that the contractor is aware of the state and federal requirements that govern the project. The borrower, consulting engineer and/or inspectors, contractors, and DEQ staff may attend the second session.

The borrower should notify all appropriate parties regarding time, date, and location of the pre-construction conferences. In addition, a suggested agenda (Form 9-B) should be sent to all parties.

The borrower, using the suggested agenda, should provide to all appropriate parties a written report of the conference sessions, including a list of persons attending, items discussed, and conclusions reached.

Disputes

To prevent disputes regarding the construction of the project, DEQ will assist borrowers by helping to facilitate clear communication on the project, providing inspections, and offering assistance with the items listed in the Checklist for Construction Dispute Review (Form 9-C).

DEQ will closely monitor the resolution of disputes, consult with the borrower concerning the eligibility of settlements and resulting fees, and promptly review documentation regarding the disputed issues. DEQ, in fulfilling its fiduciary-related responsibility in the effective use of DWSRF funds, is an interested participant in dispute resolution.

Change Orders

DEQ will review change orders to determine technical and administrative adequacy pursuant to all applicable state and federal requirements as outlined in Form 9-D. Incomplete or deficient change orders will be returned to the borrower for correction, and notification of change order approval will be provided to the borrower in writing. The Checklist for Change Order Review (Form 9-E) may be completed to document change order review.

10 Operations and Maintenance Manual

Two forms accompany this section:

- Form 10-A, Checklist for Operations and Maintenance (O&M) Manual Review
- Form 10-B, Sample Operations and Maintenance Manual Review Transmittal Letter

DEQ will review O&M manuals to ensure compliance with applicable state and federal requirements. Review activities include, but are not limited to, the following:

1. Review the draft and final versions of the O&M manual, using the Checklist for Review of O&M Manuals (Form 10-A), and provide review comments to the borrower.
2. Ensure that disbursements will not exceed 95% until the O&M manual has been approved by DEQ.
3. Upon final approval, stamp three copies of the O&M manual as “approved” and
 - a. Provide one stamped copy to the borrower with an approval letter (Form 10-B).
 - b. Provide one stamped copy to the DEQ state office’s SRF group.
 - c. Retain one copy for the official project file.

11 Construction Inspections

Five forms accompany this section:

- Form 11-A, Interim Construction Inspection Report
- Form 11-B, Request for Final Construction Inspection and Disbursement
- Form 11-C, Submittals Required Prior to Final Inspection
- Form 11-D, Documents to Have Available at the Time of Final Inspection
- Form 11-E, Final Construction Inspection Report

DEQ may conduct interim inspections of the construction of the project at the discretion of the DEQ project engineer. The frequency of interim inspections will be determined by the size and complexity of the project. The DEQ project engineer will complete an interim inspection report, using Form 11-A. DEQ will issue copies of the report to the borrower, the borrower’s project engineer, and the resident inspector, and retain a copy in the project file.

A final inspection will be conducted upon completion of construction. The final inspection is meant to determine that the project has been satisfactorily constructed in accordance with the loan authorization, approved plans and specifications, and applicable federal and state requirements.

When approximately 80% of the loan funds have been disbursed, the DEQ project officer may send Form 11-B to the borrower with instructions for completion and distribution.

Within 60 days of notification from the borrower of project completion, the final construction inspection should be conducted. Form 11-E, the Final Construction Inspection Report, may be completed and a copy provided to the borrower. The final inspection should include a review of the following items:

- The facility is complete, operating, and meets applicable standards.
- The facility conforms to the approved construction drawings, specifications, and change orders.
- Construction and accounting records are adequate and available.

- Construction impact mitigation measures and all special conditions of the loan authorization have been met.

Any deficiencies discovered during the final inspection will be discussed with the borrower, and provisions will be made for correction of problems.

12 Project Files and Accounting

Three forms accompany this section:

- Form 12-A, Checklist for Major Milestone Dates
- Form 12-B, Change Order Summary
- Form 12-C, Miscellaneous Provisions and Specimen Documents

Project Files

DEQ will be responsible for maintaining and storing the official loan project file in the TRIM system. The DEQ state office maintains general project files and fiscal records, while the DEQ regional offices maintain complementary project oversight-specific files. The State Treasurer's Office maintains any negotiable instruments used to secure loans.

DEQ may maintain a summary of major project milestone dates (Form 12-A) in each project file.

DEQ may maintain a summary sheet in each project file for change order information (Form 12-B). The information may include change order number, amount, amended contract time, and amended contract amount.

DEQ is subject to the Idaho Public Records Law (Idaho Code §9-337 through 9-350), which requires DEQ to provide the public access to all public records maintained by the agency. Generally, all project files are available to the public upon request, unless the file or document is exempt from release under the Idaho Public Records Law.

Exceptions to public records disclosure are described in Idaho Code §9-340 through 9-348, and requests for public records are evaluated according to the Idaho Public Records Law and DEQ's Policy for Handling Public Records Requests (PM12-03), available at <http://www.deq.idaho.gov/media/72047-pm12-03.pdf>.

Each project file will contain documentation to explain any changes to the original amortization schedule. Generally, prepayments and late payments will be netted over time, and the adjustment to the original schedule will be made at the very end of the payment term. This approach is similar to a standard home mortgage, with the exception that payments will be applied based upon when they are received rather than when they are due. Should the loan recipient request an amended amortization schedule and DEQ agrees to the change, the project file will provide supporting documentation to explain DEQ action.

Accounting

Accounting practices for borrowers will follow generally accepted accounting practice guidelines. The project officer and loan officer will document generally accepted accounting practice activities in the project file.

Policy for Determining Annual Drinking Water Loan Fee

Under the “Rules for Administration of Drinking Water Loans” (IDAPA 58.01.20), DEQ may elect to impose a loan fee to offset administrative costs. DEQ considers the imposition of such a fee on new loans prudent if it is expected at the beginning of the year that loan fee reserves will be less than 100% of expected annual fee-related costs.

The maintenance of a 100% floor is to provide for continued funding of the loan program in the event that loan fees are unable to meet administrative costs and capitalization funds have been exhausted and to meet other costs associated with fees in the Intended Use Plan. To the extent that loan fee reserves and expected fee revenues on existing loans exceed the 100% floor, excess fees may be transferred to the Loan Fund.

Policy Memo for Annual Interest Rate Setting

The method for determining the annual interest rate to be charged on loans and extended term financing from the Water Pollution Control and Drinking Water Loan Account is established in a DEQ policy memo available at <http://www.deq.idaho.gov/laws-rules-etc/deq-policies/>.

Glossary

100-Year Flood—A flood that has a 1% chance of occurring or being exceeded in magnitude in any given year. The 100-year flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed.

Amortization Schedule—A table showing the remaining payments on a loan, including principal and interest.

As-Built Drawings/Record Drawings—Drawings of the completed drinking water system by an engineer after construction is complete.

Backflow—The flow of water or other liquid in a reverse direction, created by a difference in water pressure. In a water system, backflow causes water to flow back into the distribution pipes.

Bidding—See Procurement Requirements.

Capital Budget—A financial statement of estimated capital expenses for a period of time, usually including proposed methods for financing those expenses. Capital includes accumulated assets and resources used to accomplish a goal.

Capital Improvements Plan—A long-range plan that identifies capital projects and equipment purchases, provides a planning schedule and capital replacement schedule, and identifies options for financing the plan. For a water system, the capital improvements plan provides a link between the water system, its comprehensive and *strategic plans*, and its annual *budget*.

Categorical Exclusion—A category of actions that do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental information document (EID) nor an environmental impact statement (EIS) is required.

Change Order—A document that authorizes changes to the original construction contract. Some causes for construction change orders include, but are not limited to, changed site conditions; requests by the borrower, engineer, or contractor; omissions in the plans and specifications; differences between contract amounts and installed quantities; and regulatory changes.

Cross-Connection—A connection between pipes carrying contaminated water and pipes carrying drinkable (potable) water.

Cross-Cutting Authorities—The requirements of federal laws and executive orders that apply in federal financial assistance programs.

Disadvantaged Business Enterprise (DBE)—An entity owned, controlled, or both, by an individual who is socially and economically disadvantaged under either EPA's 8% or 10% statutes, as well as a small business enterprise, a labor surplus area firm, or a small business in a rural area.

Disbursement—The paying out of loan funds from DEQ to the borrower.

Drinking Water State Revolving Fund (DWSRF)—Many public water systems find it difficult to obtain affordable financing for infrastructure improvements that would enable systems to comply with national primary drinking water standards and protect public health. Recognizing this fact, Congress established the DWSRF as part of the 1996 Safe Drinking Water Act Amendments. The goal of the DWSRF program is to provide states with a financing mechanism for ensuring safe drinking water to the public. States can use federal capitalization grant money awarded to them to set up an infrastructure funding account from which assistance is made available to public water systems. Loans made under the program can have interest rates between 0% and market rate and repayment terms of up to 30 years. Loan repayments to the state will provide a continuing source of infrastructure financing into the next century. The program also places an emphasis on small and disadvantaged communities and on programs that emphasize prevention as a tool for ensuring safe drinking water.

Environmental Information Document (EID)—During the environmental review process, if a proposed drinking water construction project is determined to be ineligible for a categorical exclusion, an EID shall be prepared. The EID is a written environmental assessment prepared by an applicant or consultant describing the environmental impacts of the proposed project. The EID must be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted.

Environmental Review—For each potential state revolving fund (SRF) loan project, DEQ carries out an environmental review, which is the overall process to determine whether the project may have a significant impact on the environment. The level of environmental review determines whether a categorical exclusion, a finding of no significant impact (FONSI), or an environmental impact statement (EIS) will be needed.

Equal Employment Opportunity (EEO)—EEO refers to six federal laws that prohibit job discrimination: (1) Title VII of the Civil Rights Act of 1964, (2) the Equal Pay Act of 1963, (3) the Age Discrimination in Employment Act of 1967, (4) Title I and Title V of the Americans with Disabilities Act of 1990, (5) Sections 501 and 505 of the Rehabilitation Act of 1973, and (6) the Civil Rights Act of 1991. The United States Equal Employment Opportunity Commission enforces these laws.

Equivalent Dwelling Unit (EDU)—The amount of water or drinking water an average single-family residence uses.

Fee Simple Title—Full and unrestricted ownership of real estate.

Finding of No Significant Impact (FONSI)—A document prepared by DEQ briefly presenting the reasons why an action not otherwise categorically excluded will not have a significant effect on the human environment and for which an environmental impact statement (EIS) is not prepared. The FONSI shall include the environmental assessment or a summary of it, will generally detail mitigation measures, and shall note any other environmental

documents related to it. If the environmental assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Fire Flow—The quantity of water available for fire-protection purposes.

Flood Insurance Rate Map (FIRM)—The official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special hazard areas and the risk premium zones applicable to the community. Lending institutions and federal agencies use FIRM to locate properties and buildings in relation to mapped flood hazards and to determine whether flood insurance is required when making loans or providing grants following a disaster for the purchase or construction of a building.

Force Account—Labor directly employed by the borrower (for example, a city’s public works department staff).

IDAPA—A numbering designation for all administrative rules in Idaho promulgated in accordance with the Idaho Administrative Procedures act.

Idaho Department of Environmental Quality (DEQ)—The state agency responsible for administering drinking water loans from the State Revolving Fund.

Indemnification—The act of restoring a victim of a loss, in whole or in part, by payment, repair, or replacement.

Maximum Contaminant Level (MCL)—The highest level of a contaminant that is allowed in drinking water. EPA establishes MCLs for many different contaminants.

Minority Business Enterprise (MBE)—A business that is owned and controlled by at least 51% minority member(s). Minority group members are citizens of the United States who are African American, Hispanic American, Native American, Asian Pacific American, or Subcontinent Asian American. EPA carries out the MBE/WBE program to ensure that MBEs and women’s business enterprises (WBEs) are given the opportunity to participate in contract and procurement for supplies, construction, equipment, and services under any EPA grant or cooperative agreement.

Mitigation Measures—Actions taken to minimize, remedy, reduce, eliminate, or compensate for the impact of a drinking water construction project.

No-Action Alternative—The option of not undertaking the proposed construction project.

Operations and Maintenance (O&M) Manual—Provides technical guidance on how a public water system is operated, including guidance for monitoring and reporting of water samples and testing results. The O&M manual is likely to be a system’s most detailed guidance document and helps to ensure continuity of quality service in the event of staff turnover.

Outlay—A payment or expenditure.

Plan of Operations—A planning document developed by the owner or operator of a drinking water facility detailing the facility’s life cycle, in other words, how it is to be operated during its active life and during closure.

Plans and Specifications—The engineering description of a project, including engineering drawings, maps, technical specifications, design reports, and construction contract documents in sufficient detail to allow contractors to bid on and construct the work.

Priority List—A list prepared by DEQ that ranks the drinking water projects interested in receiving loans. Loans are offered to systems based on their ranking on the priority list. Priority is given to those eligible projects that: (1) address the most serious risk to human health, (2) are necessary to ensure compliance with the requirements of the Safe Drinking Water Act, and (3) assist systems most in need, on a per household basis, according to state-determined affordability criteria.

Procurement Requirements—The legal requirements (commonly referred to as *bidding*) under which borrowers acquire goods and services.

Request for Proposals (RFP)—A document that solicits competitive proposals from prospective contractors for particular work or services. A contract is typically awarded to the winning bid.

Responsible Charge Operator (RCO)—A person designated by a water system owner to operate the water system. The RCO must be licensed at the type and class equal to or greater than the classification of the water system.

Rules for Public Drinking Water Systems (IDAPA 58.01.08)—State of Idaho rules that govern public drinking water systems in Idaho. The rules are available online at <http://adminrules.idaho.gov/rules/current/58/0108.pdf>.

Safe Drinking Water Act (SDWA)—The main federal law that ensures the quality of Americans’ drinking water. Under the SDWA, EPA sets standards for drinking water quality and oversees the states, localities, and water suppliers who implement those standards.

Sanitary Survey—An on-site review conducted by DEQ of a public water system’s water source, facilities, equipment, operation, and maintenance to determine their adequacy for producing and distributing safe drinking water.

Sole Source Aquifer—An aquifer that has been designated by EPA, under Section 1424(e) of the Safe Drinking Water Act, because the aquifer is a “sole or principal drinking water source” for an area where contamination of the aquifer could create a significant hazard to public health.

Substitute Responsible Charge Operator (SRCO)—A person designated by a water system owner to operate the water system when the responsible charge operator (RCO) is unavailable. The SRCO must be licensed at the type and class equal to or greater than the classification of the water system.

Technical, Financial, and Managerial Capacity—Capacity (also referred to as viability) refers to the abilities of a water system to deliver drinkable (potable) water to its customers. State revolving funds may not be used to finance drinking water projects for a system that lacks the technical, financial, or managerial capability to maintain SDWA compliance, unless the owner or operator of the system agrees to undertake feasible and appropriate changes in operation or if the use of the financial assistance from the funds will ensure compliance over the long term. Idaho has developed a series of flowcharts (Form 2-B) to evaluate each system to be funded to determine whether or not the system possesses necessary capability to repay the loan.

US Environmental Protection Agency—The federal agency responsible for distributing drinking water state revolving fund funds allocated by Congress as part of the amendments to the Safe Drinking Water Act. These funds are used by each to state to provide loans to drinking water systems.

User Charge System (UCS)—A written description of the methodology by which a municipality will recover the costs of building, operating, and maintaining the water system. A UCS should be designed to distribute costs equitably among all users and produce sufficient revenue to fund costs of operation, maintenance, replacement, and debt retirement.

Water System Protection Ordinance (WSPO)—A regulatory tool implemented by local jurisdictions (such as city or county governments) to address the protection of public water system drinking water sources. The ordinance typically enacts specific requirements for the protection of public water system drinking water sources within the source water assessment area boundaries.

Women’s Business Enterprise (WBE)—A business that is at least 51% owned and controlled by a woman or women who are citizens of the United States. EPA carries out the MBE/WBE program to ensure that MBEs and women’s business enterprises (WBEs) are given the opportunity to participate in contract and procurement for supplies, construction, equipment, and services under any EPA grant or cooperative agreement.