

OPERATING AGREEMENT

**FOR MANAGEMENT OF THE
DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM**

BETWEEN

**THE STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY**

AND

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X**

July 1, 2011

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Section 1.0 General

1.1 **PURPOSE**

This Operating Agreement for Management of the Drinking Water State Revolving Fund Loan Program (here after referred to as "Agreement") between the State of Idaho Department of Environmental Quality (DEQ) and United States Environmental Protection Agency Region X (EPA) establishes assigned duties and obligations for each party for management of the Drinking Water State Revolving Fund Loan Program between the EPA and DEQ and supersedes the previous Operating Agreement.

The purpose of this Agreement is to define and integrate rules, regulations, guidelines, policies, procedures and activities to be followed by EPA and DEQ in administering Idaho's Drinking Water State Revolving Fund loan fund, prescribed by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12). DEQ will use the Drinking Water State Revolving Fund Loan Account to administer the loan fund. This Agreement will continue from year-to-year and will be incorporated by reference into the annual capitalization grant agreement between the EPA and the DEQ. DEQ will use a state fiscal year of July 1 to June 30 for reporting purposes.

DEQ and EPA agree to implement modifications to this Agreement required by Congress, legal ruling or EPA regulations. Any program requirements, which necessitate modification of this Agreement, will be negotiated and implemented on a schedule agreed to by DEQ and EPA.

1.2. **OBJECTIVE OF THE IDAHO REVOLVING LOAN PROGRAM**

The primary objective of the Idaho Drinking Water State Revolving Fund Loan Program is to safeguard and improve Idaho's drinking water quality by providing a continuing source of financing for related projects and activities. This will assist Idaho communities in attaining and maintaining compliance with the Safe Drinking Water Act. Low interest loans will be the primary financing mechanism.

1.3. **IMPLEMENTATION OF THE OPERATING AGREEMENT**

This Agreement becomes effective when it is signed by both the Regional Administrator of the EPA, Region 10 and the Director of DEQ.

1.4. **SUMMARY OF THE BASIC PROVISIONS OF THE OPERATING AGREEMENT**

- A. The parties to this Agreement are EPA and DEQ.
- B. DEQ is responsible for the total management and conduct of the Loan Program.
- C. The Idaho Code (Title 39 Chapters 25 and 76 et. seq.) is Attachment 1.
- D. DEQ has adopted rules for the operation of the Loan Account (IDAPA 58.01.20) which are included as Attachment 2.
- E. DEQ has prepared operating procedures to implement an Environmental Review Process (Attachment 3).

- F. DEQ certifies that it has the authority and legal, managerial, technical and operational capability to meet the requirements necessary for administering the revolving Loan Program.
- G. EPA is responsible for awarding capitalization grants and for managing those grants.
- H. EPA will provide DEQ with grant payments to the Drinking Water State Revolving Fund Loan Account. Such payments will be made in accordance with a projected schedule submitted by DEQ and negotiated with the EPA.
- I. EPA is responsible for exercising oversight over the DEQ's administration and implementation of the Idaho Drinking Water State Revolving Fund in order to insure that it is meeting the objectives of such funds under the SDWA and insure the Fund's ability to continue assisting eligible projects in perpetuity.
- J. The authority for this agreement is under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12). In accordance with 40 CFR 35.3545(c), at the option of the State, the organizational and administrative framework and those procedures of the DWSRF program that are not expected to change annually may be described in an Operating Agreement. EPA will incorporate this agreement by reference in the annual capitalization grant agreement between EPA and DEQ, and DEQ will incorporate this agreement by reference in the State's DWSRF Intended Use Plan (IUP). Therefore, this agreement streamlines the capitalization grant process.

Section 2.0 Roles and Responsibilities

2.1. ROLE AND RESPONSIBILITIES OF DEQ

The Director of the Idaho DEQ assures the EPA Regional Administrator for Region 10 that DEQ will execute its responsibilities under this Operating Agreement in conformance with applicable Federal laws and regulations.

DEQ AGREES TO:

- A. Comply with Idaho Code Title 39 Chapter 36 and other applicable State laws. Revise Idaho's DWSRF Loan Program, including state rules, as needed to conform to new DWSRF federal regulations.
- B. Develop and maintain the legal authority and the resources and staffing required to carry out all aspects of the Idaho DWSRF Loan Program, including the technical, environmental, and financial requirements as established or referenced in this agreement.
- C. Develop an annual IUP which will include a priority list of projects for receiving financial assistance. The public will have an opportunity to review and comment on the plan in accordance with the Loan Program rules.
- D. Operate the Loan Program for purposes of its continuation in perpetuity.
- E. Manage the Loan Program in accordance with this Agreement, terms of the grant agreement, the SDWA as amended in 1996, EPA program and grant regulations, guidance issued by the EPA, and Idaho Code, state rules and procedures.
- F. Ensure EPA is kept informed and up-to-date regarding the development of draft and final program policy documents, strategies, statutes, administrative rules, and technical guidance.
- G. Complete and submit a capitalization grant application to EPA if funds are available. Accept SRF capitalization grant payments in accordance with a negotiated payment schedule.
- H. Deposit into the Drinking Water Loan Account funds equaling twenty (20) percent of each grant payment on or before the date on which DEQ receives the capitalization grant payment. Unless otherwise specified in the IUP, these funds will be transferred from Idaho's Drinking Water Loan Account.
- I. Enter into binding commitments in an amount equal to 120 percent of each grant payment within one (1) year of receipt of the payment. Projected schedules for commitment of funds to specific projects will be provided in DEQ's IUP.
- J. Commit funds to new projects or to increase existing projects and expend and disburse all monies in an expeditious and timely manner.
- K. Require communities receiving financial assistance from a capitalization grant to comply with applicable federal laws. This requirement will be handled through conditions to the loan agreement.

- L. Expend and disburse capitalization grant monies in accordance with State laws and procedures.
- M. Use fiscal controls and accounting procedures in accordance with generally accepted accounting principles.
- N. Require loan recipients to maintain separate project accounts in accordance with generally accepted accounting principles. This requirement will be implemented through a condition in the assistance agreement.
- O. Make annual reports to EPA on the use of loan funds and how DEQ has met its goals and objectives defined in the IUP.
- P. Credit all repayments, principal and interest on loans, as well as all earnings on the Fund's invested balances, made from the Drinking Water Loan Account back to the Drinking Water Loan Account. Maintain the Drinking Water Loan Account as a dedicated account or series of accounts. Credit all fee payments to the fee account.
- Q. Maintain the Drinking Water Loan Account and the set-asides as dedicated accounts.
- R. Comply with applicable federal laws and regulations.
- S. Require communities receiving financial assistance from a capitalization grant to comply with applicable federal and state laws and regulations. These federal regulations include complying with the cross-cutting federal authorities for projects and activities whose cumulative Loan Account financing is at least equal to the amount of the capitalization grant awarded to DEQ. This requirement will be handled through conditions in the assistance agreement. Cross-cutting federal authorities are listed on the Drinking Water State Revolving Fund web site at <http://epa.gov/ovm/cwfinance/cwsrf/enhance/DocFiles/Other%20Docs/CrosscutterHandbook.pdf>.
- T. Apply the environmental review requirements of DEQ's rules and environmental review procedures to all projects receiving assistance from the Loan Account. If utilizing an EPA-approved State Environmental Review Process (SERP) that allows Tier II environmental review, identify in the IUP whether a project will undergo Tier I or Tier II environmental review. Track the annual and cumulative value of funds provided to projects that undergo Tier I and Tier II environmental review in the Annual Report. DEQ's SERP is Attachment 3 to this Operating Agreement.
- U. As a part of this environmental review the DEQ hereby agrees to serve as the designated non-Federal Representative pursuant to 50 C.F.R. §402.08 for consultation under the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq. DEQ will conduct informal consultation under the ESA. The DEQ will prepare any required biological assessment under the direction of the EPA. The DEQ may delegate this responsibility to the SRF assistance recipient or may carry it out in cooperation with the SRF assistance recipient. Any ESA matters will be resolved by the DEQ and the EPA in accordance with the requirements of the ESA and any applicable EPA guidance on ESA compliance in the Drinking Water State Revolving Fund Loan Program.

- V. Make available for EPA audit or review DEQ records relating to the Loan Account.
- W. Require Loan Account assistance recipients to make their records available, if necessary, for EPA review.
- X. Require all loan recipients to establish a dedicated source of revenue for repayments. This requirement will be implemented through a condition in the assistance agreement.
- Y. Offer extended term financing in accordance with DEQ protocol, provided such financing does not exceed the lesser of the useful life of the underlying asset or 30 years and is administered in such a way as to protect the long-term revolving nature of the Loan Program.

2.2. **ROLE AND RESPONSIBILITIES OF THE EPA**

EPA AGREES TO:

- A. Provide funding by awarding capitalization grants to DEQ upon approval of a completed application and subject to the availability of appropriated funds.
- B. Provide grant funds to DEQ according to a mutually agreeable payment schedule defined in DEQ's IUP.
- C. Provide technical assistance to DEQ and assist in developing and conducting training programs.
- D. Provide advice and consultation as requested by DEQ.
- E. Provide oversight through the Annual Review and Annual Audit Process.
- G. Provide DEQ with permit information relating to individual projects, including discharge limitations.
- H. In the event that the EPA identifies an instance of noncompliance it agrees to address the noncompliance in accordance with the terms of the annual capitalization grant terms and conditions (informing DEQ of noncompliance and any necessary corrective action).
- I. Carry out other activities and duties as agreed to in this document or specified in law or regulation.

Section 3.0 Program Administration

3.1. STATE ORGANIZATIONS

Five state government bodies are involved in the operation of the DWSRF. The organization charged with the principal duties is DEQ.

- A. **Idaho DEQ**
 - The DEQ Water Quality Division is responsible for administration, implementation, and coordination of all activities related to the DWSRF.
 - The DEQ Fiscal Office will maintain all SRF fiscal records.

- B. **Attorney General**
 - The Deputy Attorneys General assigned to DEQ will provide legal assistance related to the DWSRF. Their duties will include contract review and legal advice as needed.

- C. **State Controller**
 - The State Controller is responsible for processing records relating to the state accounting system.

- D. **State Treasurer**
 - The State Treasurer is responsible for investment of idle DWSRF funds. All interest earned from such investments will be credited to the Drinking Water Revolving Fund Loan Account. The State Treasurer will also keep bonds and other loan securities held by DEQ in a vault until maturity.

- E. **Legislature**
 - The Idaho Legislature is responsible for appropriation of state funds. The Legislative Services Office Auditor will provide the annual audit of the DWSRF.

3.2. STAFFING AND MANAGEMENT

- A. DEQ will provide the staffing and training necessary to administer the Loan Program.

- B. DEQ will not use more than the amount authorized in the capitalization grants received to administer the DWSRF. DEQ may need to use loan fees to supplement the amount authorized in the capitalization grant in order to administer the DWSRF program.

- C. The Legislative Auditor will conduct an annual independent audit of the Drinking Water Revolving Fund Loan Account and its operations. This audit will follow procedures specified in the General Accounting Office Standards for Audit of Governmental Organizations, Programs and Functions. The audit report will be completed within one year of Idaho's fiscal year and will be sent to the EPA Project Officer for Idaho's capitalization grants.

- D. EPA agrees to notify DEQ within 90 days of receipt of the audit report on the technical adequacy of the audit report and its findings.

- E. DEQ will strive to ensure the long-term viability of the fund and will annually assess the financial position of the Drinking Water Revolving Fund Loan Account by examining fund balances, sources of funds, repayment streams, etc. Procedures will be revised, as needed, to promote the Account's availability.

3.3. **OPERATION OF THE LOAN PROGRAM**

The loan process begins when an applicant is placed on the DWSRF priority list. If a facility plan has not been completed, DEQ staff will explain the requirements for completion of planning, including preparation of an Environmental Information Document (EID).

If a facility plan and EID have been completed and a finding on the EID issued, DEQ staff will, at the request of the applicant, conduct a pre-application conference. An application will be provided at this conference.

Upon receipt of a completed application, Project Engineers in the DEQ regional offices will review the application for completeness and accuracy. After review, the application will be forwarded to the Loan Program Manager in the State Office for preparation of a loan offer. Loan offers are reviewed by a Deputy Attorney General prior to signature by the Director or the Director's designee.

DEQ Project Engineers will review plan and specification documents and provide loan recipients with an insert, detailing DWSRF requirements, for the bid package. The engineers also review bid tabulations and approve awarding of bids.

Loan disbursements will be made as costs are incurred. Disbursement request forms along with corresponding invoices are sent to the Project Engineers for approval. Upon approval the disbursement request are sent to the DEQ Fiscal Office for processing. Cash draws are made in accordance with EPA's electronic funds transfer procedures.

DEQ Project Engineers will provide construction management by attending construction conferences, reviewing construction claims, disputes and change orders. Additionally, to insure that projects are being constructed and managed properly they will conduct interim and final inspections.

Prior to project completion, DEQ Project Engineers will review User Charge Systems as well as Operation and Maintenance Manuals.

The DEQ Fiscal Office will maintain project records for disbursement and loan repayments. Copies of the fiscal records will be maintained along with other project information in files at both the DEQ regional and state offices. Bonds and other collateral for loans will be held in a vault at the State Treasurer's office.

3.4. **PUBLIC PARTICIPATION**

DEQ will provide opportunity for public participation in accordance with EPA requirements and the applicable state laws and rules. The public will be given an opportunity to comment on the development of the project priority list, the IUP and, during environmental review processes.

Section 4.0 Financial Administration

4.1. CAPITALIZATION GRANT PAYMENTS

The schedule of payments is based upon DEQ's IUP. Once a payment has been made by increasing the amount of funds available for cash draw, EPA will not reduce that amount, unless a situation of noncompliance has developed.

All payments will be made not later than eight (8) quarters after the award of the capitalization grant agreement or twelve (12) quarters after the date the funds were allotted to DEQ.

4.2. CASH DRAWS

Money will be transferred to the DWSRF Loan Account from the U.S. Department of the Treasury in accordance with the EPA's DWSRF Electronic Funds Transfer (EFT) system requirements. Cash draws for the DWSRF will be made separately from other cash draws from the combined federal EFT transfers.

4.3. DISBURSEMENTS

A flow chart of DEQ's procedures for the disbursement of funds from the DWSRF is provided as Attachment 5.

Borrowers will be supplied with disbursement request forms by the DEQ. Loan disbursements will be made as costs are incurred. Requests for disbursement will be processed as quickly as possible by the DEQ. Requests will be reviewed for eligibility and to assure that costs are adequately documented. Project officers will review each request in accordance with criteria on the Disbursement Review Checklist and sign the request as indicated.

Upon receipt of the Borrower's request and completion of the checklist the Project Officer will transmit both documents to the Fiscal Office, with a copy to the Loan Program Manager. The documents will be reviewed for content and accuracy by the accounting staff and upon approval a disbursement will be prepared. All disbursement documents will become a permanent part of the project file.

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

1. Final construction inspection reports.
2. Engineer's certification that construction was completed in accordance with approved plans and specifications.
3. Borrower's acceptance of construction.

4.4. FEES

The DEQ has the authority to assess (IDAPA 58.01.20.032) a loan fee of up to one (1) percent and maintains these funds in a fee account separate from the DWSRF Loan Account. This fee income will be used to supplement the capitalization grant set-aside to administer the fund and also to

otherwise facilitate the operation of the Safe Drinking Water Act State Revolving Fund effort as approved by EPA. DEQ will differentiate between program income earned during the grant period and other types of fee income. Annual and cumulative fee revenues and expenses will be reported in the Annual Report and Intended Use Plan. The fee rate will be set such that it does not jeopardize the long-term perpetuity of the fund.

Section 5.0 Program Documents and Reports

5.1. INTENDED USE PLAN

DEQ will develop an annual Intended Use Plan (IUP) that identifies the intended uses of Loan Program funds and fees and describes how those uses support the goals of the Fund. DEQ will ensure all IUP requirements in 40 CFR 35.35 are addressed and will develop the plan in a format and manner agreed to by EPA. DEQ will include in the IUP:

- All drinking water systems on the State's project priority list that are eligible for Fund assistance.
- Projects eligible for funding if additional funds become available.
- Short-term and long-term program goals and objectives.
- Information on the types of activities to be supported, including eligible categories of costs.
- Assurances and specific proposals on how the State intends to meet the requirements of 40 CFR 35.35 SDWA binding commitments, expeditious and timely expenditures, and environmental review requirements.
- The criteria and method for distribution of funds.
- A description of the criteria and method the State will use to select projects or programs to be funded.
- A summary of the procedures allowing public comment and review of the IUP.
- The anticipated sources and uses of all the fiscal year's funds will be identified.
- A description of how the funds will be allocated among the projects consistent with the amount available, the financial assistance needed, all applicable state and federal laws, IDAPA 58.01.20, and program procedures and other requirements.

The IUP project priority list may be changed or amended during the year under provisions established in the IUP so long as the projects on the new priority list have been identified through the public participation process.

5.2. ANNUAL REPORT

Annually, DEQ will report the activities of the Loan Program using a format negotiated with EPA. The report will be sent to the Director, Office of Water and Watersheds of EPA, Region 10 no later than October 30 of each year, and will cover the State fiscal year (July 1 through June 30). This report will identify loan recipients, loan amounts, loan terms and project categories. It will further describe how DEQ has met the goals and objectives identified in the Intended Use Plan as well as how the DEQ has used the Loan Program to help the state achieve its high priority drinking water goals.

Specifically, the report will contain seven sections:

1. Introduction stating the period the report is prepared for and if the goals were met.

2. General program summary.
3. Description of both short-term and long-term goals and accomplishments.
4. Detailed description of the fund status, assistance activities, and relevant provisions of the Operating Agreement and/or grant conditions.
5. Explanation of any program changes, both in the Intended Use Plan and in Goals and Objectives.
6. Description of any proposed improvements that are contemplated, either in the program or for long or short-term goals for future Intended Use Plans.
7. Financial statements and notes to financial statements.

5.3. **PROGRAM EVALUATION REPORT**

DEQ and EPA will coordinate to plan a review at least annually. EPA will propose to DEQ a program evaluation agenda that includes specific activities, time and place, and program documents to be made available during the review. EPA will provide DEQ with a copy of the draft program evaluation report (PER) in a timely manner for review and comment prior to issuing a final PER. The PER will address program highlights, required program and financial elements, and any required or recommended actions.

5.4. **PROGRAM AND PROJECT RECORDS**

DEQ will receive and review project documents from assistance recipients. These documents, together with the State's review memorandums and checklists for each project will be kept in the Department's official records, also called project files. DEQ records are state records required to be preserved, stored, destroyed or otherwise managed in accordance with Idaho Code title 67, chapter 57. DEQ will make records available to EPA for review upon reasonable notice. DEQ will retain project files in accordance with 40 CFR Part 30 and Part 31 (as appropriate) and the Idaho Public Records Law, Idaho Code § 9-337 to 9-350.

DEQ will allow any person to review its records related to the Loan Program consistent with the Idaho Public Records Law, Idaho Code § 9-337 to 9-350.

Project records in the possession of EPA may be requested pursuant to the Federal Freedom of Information Act, 5 U.S.C.552 and EPA's regulations at 40 C.F.R. Part 2.

Section 6.0 Agreement Modification and Execution

6.1. SIGNIFICANT MODIFICATIONS

Significant modifications to this agreement can only be made if jointly agreed to by the DEQ Director and the EPA Region 10, Regional Administrator.

6.2. MINOR MODIFICATIONS

Minor modifications to this agreement can only be made if jointly agreed to by the DEQ Water Quality Division Administrator and the EPA Region 10, Office of Water and Watersheds Director.

6.3. NO PRIVATE RIGHT OF ACTION

This Operating Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a party to this agreement, against DEQ or EPA, their officers or employees, or any other person. This Operating Agreement does not direct or apply to any person outside of DEQ and EPA.

6.4. APPROVAL AND EFFECTIVE DATE

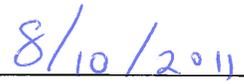
This Operating Agreement shall take effect upon execution by both the DEQ Director and the Environmental Protection Agency, Region 10, Regional Administrator.

In witness whereof, the parties execute this agreement:

FOR THE STATE OF IDAHO:

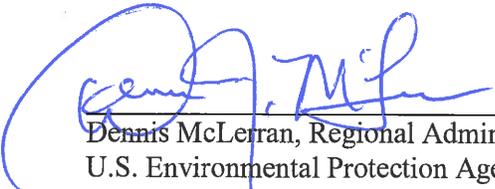


Toni Hardesty
Director
Idaho Department of Environmental Quality

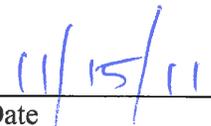


Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10



Date



Idaho Statutes

TITLE 39
HEALTH AND SAFETY

CHAPTER 76
PUBLIC DRINKING WATER SYSTEM LOANS

39-7601.AUTHORIZATION OF LOANS. The director is hereby authorized to make loans at or below market interest rates, as funds are available, to any eligible public water system to assist the public water system or which will facilitate their compliance with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of this chapter.

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 TITLE 39
 HEALTH AND SAFETY

 CHAPTER 76
 PUBLIC DRINKING WATER SYSTEM LOANS

39-7602.DISBURSEMENTS BY THE DIRECTOR OF LOANS TO PUBLIC WATER SYSTEMS -- LIMITATIONS ON LOANS -- RULES -- APPROVAL OF THE ATTORNEY GENERAL -- AUDIT OF DISBURSEMENTS. (1) There is hereby created the drinking water loan fund. The department of environmental quality shall use moneys from this fund only for providing loans, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in the drinking water loan fund, or for other financial assistance authorized in this chapter or by federal law to community water systems and nonprofit noncommunity water systems. Financial assistance under this section may be used by a public water system only for project expenditures, not including monitoring, operation and maintenance expenditures, which will facilitate compliance with national primary drinking water standards applicable to the system or which will significantly further the health protection objectives of this chapter. The funds may also be used for public water systems using constructed conveyances and not piped water systems if they meet the requirements of the safe drinking water act amendments of 1996 and the director determines that the water provided for residential or similar uses for cooking, drinking and bathing is centrally treated or treated at the point of entry to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. The funds shall not be used for the acquisition of real property or an interest in real property unless the acquisition is integral to the project authorized by this section and the purchase is from a willing seller.

- (2) (a) Except as provided in subsection (2)(b) of this section, no loan assistance shall be provided to a public water system that:
- (i) Does not have the technical, managerial and financial capability to ensure compliance with the requirements of this chapter; or
 - (ii) Is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.
- (b) A public water system referenced in subsection (2)(a) of this section may receive assistance under this section if:
- (i) The assistance will ensure compliance, and
 - (ii) If subsection (2)(a)(i) of this section applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply or other procedures, and then only if the director determines that the measures are necessary to ensure that the system has the technical, managerial and financial capability to comply with the requirements of this chapter and the safe drinking water act amendments of 1996.
- (3) Except as otherwise prohibited by state law, the amounts deposited into the drinking water loan fund under this chapter may be used only for the following:
- (a) To make loans on the conditions that:
- (i) The interest rate for each loan is less than or equal to the market interest rate,
 - (ii) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made and each loan will be fully amortized not later than twenty (20) years after completion of the project, except that in the case of a disadvantaged community, an extended term for a loan may be allowed if it terminates not later than thirty (30) years after the date the project is completed, and does not exceed the design life of the project,
 - (iii) The recipient of each loan will establish a dedicated source of revenue, or, in the case of a privately owned system, demonstrate that there is adequate security, for the repayment

- of the loan, and
- (iv) The drinking water loan fund will be credited with all payment of principal and interest on each loan;
- (b) To buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the state at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;
- (c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of the bonds will be deposited into the drinking water loan fund; and
- (d) To earn interest on the amounts deposited into the drinking water loan fund.
- (4) For every agreement between the state and the federal government by which funds are made available, the state shall deposit in the drinking water loan fund an amount equal to at least twenty percent (20%) of the total amount of the grant to be made to the state on or before the dates on which grant payments are made to the state.
- (5) The director may promulgate rules necessary for the making and enforcing of loan contracts hereunder and for establishing procedures to be followed in applying for state loans or loan subsidies or training assistance herein authorized as shall be necessary for the effective administration of the loan program.
- (6) All contracts entered into pursuant to this chapter shall be subject to approval by the attorney general as to form. All disbursements by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

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Idaho Statutes

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TITLE 39
HEALTH AND SAFETY

CHAPTER 76
PUBLIC DRINKING WATER SYSTEM LOANS

39-7603. INVESTMENT OF FUNDS IN DRINKING WATER LOAN ACCOUNT. Surplus moneys in the drinking water loan account established by section 39-7602, Idaho Code, shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in section 57-1210, Idaho Code. Interest received on all such investments shall be paid into the account. The account shall have paid into it: federal funds which are received by the state to provide for drinking water loans to public water systems together with the required state matching funds; all principal and interest repayments of loans made pursuant to this chapter; all donations and grants from any source which may be used for the provisions of this chapter; and any moneys which may hereafter be provided by law.

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TITLE 39
HEALTH AND SAFETY

CHAPTER 76
PUBLIC DRINKING WATER SYSTEM LOANS

39-7604. APPROPRIATIONS FOR THE DRINKING WATER LOAN ACCOUNT -- PURPOSE OF CHAPTER. Moneys in the drinking water loan account are hereby perpetually appropriated to provide loans and other forms of financial assistance authorized under title XVI of the public health service act known as the safe drinking water act and the safe drinking water act amendments of 1996, 42 U.S.C. 300f et seq., to any eligible public water system in order to enable the system to comply with the above referenced act and relevant regulations.

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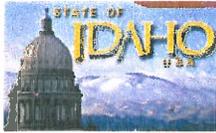
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TITLE 39
HEALTH AND SAFETY

CHAPTER 76
PUBLIC DRINKING WATER SYSTEM LOANS

39-7605.LIMITS ON THE AMOUNTS AND LOANS. The director may make loans to eligible public water systems pursuant to the requirements of this chapter and federal laws and regulations provided, that the projected disbursements for such loans would not cause the projected balance in the loan fund to fall below zero at any time. All loan disbursements shall be subject to the availability of moneys in the account.

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**IDAPA 58
TITLE 01
CHAPTER 20**

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

000. LEGAL AUTHORITY.

The Idaho State Board of Environmental Quality, pursuant to authority granted in Chapters 1 and 76, Title 39, Idaho Code, adopted the following rules for the administration of a Drinking Water Loan Program in Idaho. (5-3-03)

001. TITLE AND SCOPE.

01. **Title.** These rules shall be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program." (5-3-03)

02. **Scope.** The provisions of these rules shall establish administrative procedures and requirements for establishing, implementing, and administering a state loan program to provide financial assistance to qualifying entities of public water system facilities. The U.S. Environmental Protection Agency provides a capitalization grant to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (3-23-98)

002. WRITTEN INTERPRETATIONS.

As described in Idaho Code Section 67-5201(19)(b)(iv), the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. (3-23-98)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (5-3-03)

004. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Loan Program. The Drinking Water Loan Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (4-2-08)

005. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. **Incorporation by Reference.** These rules do not contain documents incorporated by reference. (4-2-08)

02. **Availability of Referenced Material.** The "Drinking Water Loan Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (4-2-08)

006. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." (4-2-08)

007. SYSTEM ELIGIBILITY.

01. **Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (3-23-98)

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08); (3-23-98)

d. Systems under current drinking water enforcement action by the Department; or (3-23-98)

e. Systems delinquent in payment of the annual state drinking water fee assessment. (3-23-98)

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 006.02.a. through 006.02.d. may receive assistance if: (5-3-03)

a. The use of the assistance will ensure compliance; (3-23-98)

b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (3-23-98)

c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (3-23-98)

d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Department conducts a review to determine whether this section applies to the system. (4-2-08)

008. – 009. (RESERVED).

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

01. Applicant. Any qualifying entity making application for Drinking Water loan funds. (5-3-03)

02. Board. The Idaho Board of Environmental Quality. (4-2-08)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (4-2-08)

04. Close or Closing. The date on which the borrower issues and physically delivers to the Department the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (4-7-11)

05. Community Water System. A public drinking water system that: (5-3-03)

a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)

- b. Regularly serves at least twenty-five (25) year-round residents. (3-23-98)
06. **Construction.** The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary planning to determine the economic and engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)
07. **Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)
08. **Department.** The Idaho Department of Environmental Quality. (3-23-98)
09. **Director.** The Director of the Idaho Department of Environmental Quality or the Director's designee. (4-2-08)
10. **Disadvantaged Community.** The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)
11. **Disadvantaged Loans.** Loans made to a disadvantaged community. (3-23-98)
12. **Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (5-3-03)
13. **Eligible Costs.** Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
14. **Eligible Systems.** Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)
15. **Engineering Report.** A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. (4-2-08)
16. **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed drinking water construction project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing an EIS. (4-2-08)
17. **Environmental Information Document (EID).** Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water construction project. This document will 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. (4-2-08)
18. **Facility Plan.** A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a

master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.

(4-2-08)

19. Financial Management System. Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)

20. Finding Of No Significant Impact (FONSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it.

(4-2-08)

21. Handbook. "Drinking Water Loan Handbook of Procedures." (5-3-03)

22. Ineligible Costs. Costs which are described in Subsection 041.05. (5-3-03)

23. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (5-3-03)

24. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)

25. Noncommunity Water System. A public water system that is not a community water system. (3-23-98)

26. Nonprofit Noncommunity Water System. A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (3-23-98)

27. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)

28. O & M Manual. Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)

29. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-23-98)

30. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)

31. Priority List. A list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (5-3-03)

32. Public Drinking Water System/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such

term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (4-2-08)

33. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (4-2-08)

34. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

35. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

36. State. The state of Idaho. (3-23-98)

37. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

38. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

39. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (5-3-03)

40. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts shall not be reinstated. (3-23-98)

41. Unreasonable Risks to Health (URTH). Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)

42. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system. (4-2-08)

43. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources (and in all ways protects the water system from injection of contaminants), and which provides for fees for service from users or classes of users. (3-23-98)

44. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (5-3-03)

011. FINANCIAL TECHNICAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for the construction of projects unless the applicant has demonstrated and certified that it has the legal, technical, institutional, managerial, and financial capabilities to ensure construction, operation and maintenance (including equipment replacement of the proposed public water system facility), and to repay principal and interest which would be due on a loan from the state revolving loan fund. (3-23-98)

01. Information Needed. Before an application shall be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (3-23-98)

02. Incorporated Nonprofit Applicants. (3-23-98)

a. In addition to all other information required to be submitted by these rules and regulations, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-23-98)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 03, Title 30, Idaho Code; (3-23-98)

ii. The corporation is authorized to incur indebtedness to construct, improve, or repair public water systems facilities; (3-23-98)

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (3-23-98)

iv. The corporation exists either perpetually or for a period long enough to repay a public water system facility loan; and (3-23-98)

v. The corporation is capable of raising revenues by fixing and collecting user charges. (3-23-98)

b. The Department may impose conditions on the making of a public water system facility loan to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and regulations and the provisions of Chapter 76, Title 39, Idaho Code. (3-23-98)

03. Cost Allocation. An applicant proposing to construct public water system facilities designed to serve two (2) or more qualifying entities must show how the costs shall be allocated among the participating entities. Such applicants must provide an executed inter-organizational service agreement which, at a minimum, incorporates the following information: (4-2-08)

a. The basis upon which the costs are allocated; (3-23-98)

b. The formula by which the costs are allocated; and (3-23-98)

c. The manner in which the cost allocation system shall be implemented. (3-23-98)

04. Waivers. The requirement in Subsection 011.03 may be waived by the Department if the applicant can demonstrate: (3-23-98)

a. Such an agreement is already in place; (3-23-98)

b. There is documentation of a service relationship in the absence of a formal agreement; or (3-23-98)

c. The entity providing public drinking water exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying drinking water fails to participate. (3-23-98)

012. – 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, water quality criteria, and condition of the existing system. (4-2-08)

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)

a. **Public Health Emergency.** Shall be certified by the Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) (4-2-08)

b. **Public Health Hazard.** Identified and documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) (4-2-08)

c. **Water Quality Violations.** Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)

d. **General Conditions of Existing Facilities.** Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (3-23-98)

e. **Overall Urgency.** Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (3-23-98)

f. **Consent or Administrative Orders.** Points shall be given if the system is operating under an order. (30 points) (3-23-98)

g. **Incentives.** Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (16 points) (3-23-98)

h. **Affordability.** Points shall be given when proposed system user charges exceed state affordability guidelines. (10 points) (3-23-98)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-23-98)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for, or scope of any project, a reevaluation of that priority rating shall be conducted. (3-23-98)

05. Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

06. Project Bypass. A project that does not or shall not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project or projects that are ready to proceed. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-23-98)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have an annual cost of drinking water service for residential customers which exceeds one and one-half percent (1½%) of the median household income. (4-2-08)

a. The annual cost includes all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) being financed with state revolving funds. If the applicant's service area is not within the boundaries of a municipality, or if the applicant's service area's median household income is not consistent with the municipality as a whole, the applicant may use the census data for the county in which it is located or may use a representative survey, conducted by a Department approved, objective third party, to verify the median

household income of the applicant's service area. (4-2-08)

b. For disadvantaged applicants for which the annual cost exceeds one and one-half percent (1½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (4-2-08)

02. Adjustment of Loan Terms. Loan terms may be adjusted in the following sequence: (5-3-03)

a. First, the length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual cost equals one and one-half percent (1½%) of median household income. (4-2-08)

b. If at a thirty (30) year repayment, the annual cost still exceeds one and one-half percent (1½%) of the median household income, the loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual charge equal to one and one-half percent (1½%) of median household income. (4-2-08)

c. The interest rate may be reduced to as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds one and one-half percent (1½%) of median household income, the principal which causes the user charge to exceed one and one-half percent (1½%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total loan. (4-2-08)

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

Loan funds awarded under this program may be used to prepare an engineering report or a facility plan which identifies the cost effective and environmentally sound drinking water system alternative to achieve or maintain compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (4-2-08)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. Engineering report or facility plan prepared by an Idaho licensed professional engineer who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department; (4-2-08)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (4-2-08)

c. Step 3. Construction, which includes bidding and actual construction of the project; or (3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans shall be amortized and a repayment schedule prepared by the Department. (3-23-98)

03. Requirements for Awarding a Loan. Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 engineering report or facility plan and approved by the Department. If the engineering report or facility plan has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the

qualifying entity and conducted in accordance with state law. (4-2-08)

04. Funding for Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth except that distribution and transmission lines which may be planned for a forty (40) year useful life. (5-3-03)

031. LIMITATION OF PRE-LOAN ENGINEERING REVIEWS.

Department staff may review engineering or facility planning documents for any drinking water system. However, in order for the costs of preparation of pre-loan engineering documents to be loan eligible, the consulting engineer must submit a certificate of professional liability indemnification in accordance with Subsection 050.05.d. (4-2-08)

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the Drinking Water State Revolving Fund (DWSRF) effort. The Department may impose a loan fee on loans scheduled to close after December 2, 2009. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. (4-7-11)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 1452 of the Safe Drinking Water Act (42 U.S.C. Section 300j-12). In determining the amount of the loan fee, the Department shall consider: (4-7-11)

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year, including salaries and overhead; (4-7-11)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; (4-7-11)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (4-7-11)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the DWSRF loan program. (4-7-11)

03. Effect on Loan Interest Rate. The loan interest rate, as described in Subsection 050.05, will be reduced by the corresponding percentage of the loan fee. (4-7-11)

04. Payment of Loan Fee. The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (4-7-11)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (3-23-98)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks

set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; and (5-3-03)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (4-2-08)

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1. Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the engineering report or facility plan, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. (4-2-08)

h. Step 2. Design. (4-2-08)

i. Engineering report or facility plan including a final environmental document and decision in accordance with Section 042; (4-2-08)

ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)

iii. Inter-organizational service agreements between all qualifying entities within the scope of the project, if applicable; and (4-2-08)

i. Step 3. Construction. (4-2-08)

i. Documented evidence of all necessary easements and land acquisition. (5-3-03)

ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)

iii. A plan of operation and project schedule; (3-23-98)

iv. A user charge system, water use system protection ordinance, and financial management system; (3-23-98)

and

v. A staffing plan and budget. (3-23-98)

j. Step 4. Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. (4-2-08)

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Loan. The action of disapproving, recalling, or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, designing and/or constructing drinking water systems; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or engineering report for design and construction of drinking water systems, and any other relevant information in the application that describes the scope of the project to be funded. (4-2-08)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (4-2-08)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable, and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses such as salaries and expenses of a mayor, city council members, board; or city, district, or board attorney; (4-2-08)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)

d. Engineering directly related to the public water system facilities; (5-3-03)

e. Financial and management capability analysis if it ensures compliance; (5-3-03)

f. Preparation of construction drawings, specifications, estimates, and construction contract

- documents; (5-3-03)
- g. Landscaping; (5-3-03)
 - h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)
 - i. Material acquired, consumed, or expended specifically for the project; (5-3-03)
 - j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
 - k. Preparation of an operation and maintenance manual; (5-3-03)
 - l. Preparation of a plan of operation; (5-3-03)
 - m. Start-up services; (5-3-03)
 - n. Project identification signs; (5-3-03)
 - o. Public participation for alternative selection; (5-3-03)
 - p. Development of user charge and financial management systems; (5-3-03)
 - q. Development of water system protection and backflow prevention ordinance or rule; (5-3-03)
 - r. Initial staffing plans and budget development; (5-3-03)
 - s. Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
 - t. Site acquisition costs, including right of way and the site for public water system; and (5-3-03)
 - u. Certain direct and other costs as determined eligible by the Department. (5-3-03)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a. Basin or area wide planning not directly related to the project; (5-3-03)
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c. Personal injury compensation or damages arising out of the project; (5-3-03)
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e. Costs outside the scope of the approved project; (5-3-03)
 - f. Ordinary operating expenses such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; (4-2-08)
 - g. Cost of land in excess of that needed for the proposed project; (5-3-03)
 - h. Cost of condemnations; or (5-3-03)

- i. Engineering costs incurred without professional liability insurance. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. The applicant shall complete an environmental review as part of and in conjunction with an engineering report or facility plan. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information and assessment of environmental impacts, the applicant shall complete one (1) of the following per the Department's instruction: (4-2-08)

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (3-23-98)

or

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)

02. Categorical Exclusions. If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (4-2-08)

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper to inform the public of this action, following which the engineering report or facility plan can be approved and the loan award can proceed. (4-2-08)

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. (4-2-08)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: (4-2-08)

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (3-23-98)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (3-23-98)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). (4-2-08)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a

newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. (4-2-08)

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (3-23-98)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (4-2-08)

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Department approval. (5-3-03)

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. (4-2-08)

09. Validity of Review. Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public views and shall: (3-23-98)

a. Reaffirm the earlier decision; or (3-23-98)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period, the loan funds may be offered to the next project on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity becomes a loan recipient. The disbursement of funds, pursuant to a loan contract, is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who shall be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (4-2-08)

04. Estimate of Reasonable Cost. All loan contracts shall include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (4-2-08)

d. Requirement for the prime engineering firm(s), retained for engineering services, to carry professional liability insurance to protect the public from negligent acts of the engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (4-2-08)

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; (5-3-03)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. The loan fee pursuant to Section 032; (4-7-11)

h. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The borrower may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)

i. Repayment default shall occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. (4-2-08)

052. -- 059. (RESERVED).

060. DISBURSEMENTS.

01. Loan Disbursements. The loan contract shall include a schedule of estimated disbursements to be made to the borrower. The schedule shall include the anticipated dates and amounts of disbursements. Requests to the Department for actual disbursement of loan proceeds shall be made by the loan recipient on forms provided by the Department. (3-23-98)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (3-23-98)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost, the loan amount shall be reduced proportionately. (3-23-98)

04. Project Review to Determine Final Eligible Costs. A project review by the Department shall determine the final eligible costs. (3-23-98)

05. Final Disbursement. The final loan disbursement consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been completed. (3-23-98)

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents including engineering firm(s), contractor(s), or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (5-3-03)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification, or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; (3-23-98)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years of imprisonment or any crime involving or affecting the project; (3-23-98)

c. Violation(s) of any term of the loan contract; (3-23-98)

d. Any willful or serious failure to perform within the scope of the project, plan of operation, project schedule, terms of engineering sub-agreements, or contracts for construction; or (5-3-03)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-23-98)

02. Notice. The Director shall notify the loan recipient in writing, and forwarded by certified mail, of the intent to suspend or terminate the loan contract. The notice of intent shall state: (3-23-98)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-23-98)

b. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Reinstatement of Suspended Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exist(s), the Director may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (3-23-98)

05. Reinstatement of Terminated Loan. No terminated loan shall be reinstated. Terminated loans shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (3-23-98)

081. -- 994. (RESERVED).

995. WAIVERS.

Waiver from the requirements of these rules may be granted by the Department Director or the Director's designee, on a case-by-case basis, upon full demonstration by the loan applicant/recipient requesting the waiver that the following conditions exist. (4-2-08)

01. Health Hazard. A significant public health hazard exists; (3-23-98)

02. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (3-23-98)

03. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (3-23-98)

996. -- 999. (RESERVED).

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STATE ENVIRONMENTAL REVIEW PROCESS

In response to the U.S. Environmental Protection Agency's (EPA) national environmental review process requirement for Safe Drinking Water Act (SDWA) projects, the State of Idaho has operating procedures analogous to 40 CFR Part 6. These procedures apply to all "Tier I" and "Tier II" projects receiving financial assistance from the Drinking Water State Revolving Fund Loan Account (DWSRF).

Chapter 5 of the DEQ DWSRF Handbook, herein incorporated by reference, provides detailed guidance for the loan recipient in evaluating crosscutting environmental issues. According to EPA guidance documents, an approvable state environmental review process must incorporate seven elements. Idaho's response to each of these elements follows.

ELEMENT 1: LEGAL FOUNDATION

- A. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS. Under Idaho Code § 39-105(4) DEQ has the required level of authority to perform environmental reviews. Under that section, the Department Director, when designated by the Governor, is authorized to "receive on behalf of the state, and utilize any federal aid . . . made available through the federal government, including the, for use in or by the State of Idaho in relation to health and environmental protection." The Director has been designated by the Governor to receive and utilize SDWA funds, and he or she is authorized to perform environmental reviews of projects funded with federal money, since such authority is required to utilize such money.

Idaho Code § 39-3626 designates the Board of the Department of Environmental Quality, through the Director, as the state authority responsible for administration of grants and loans for drinking water projects funded with state and federal money. The Board is authorized to adopt rules necessary for the effective administration of the grant and loan program, Idaho Code § 39-3627(4). Since authority to conduct environmental reviews of eligible projects is required to utilize federal funds, these provisions authorize the Board to adopt regulations governing environmental reviews of federal funded projects, and authorize the Director to implement such regulations.

- B. LEAD AGENCY. The DEQ will have primacy in conducting reviews. We will be conducting multidisciplinary reviews with other state and federal agencies. The State Department of Fish and Game and the Idaho State Historical Society are examples of the other state agencies that may be involved at the state level. The U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers are examples of federal agencies that may participate.
- C. DELEGATION. The loan recipient will have the following responsibilities during the environmental review process.
1. Gathering Environmental Information. The loan recipient will be responsible for

gathering and incorporating screening-level environmental information regarding the project, the Proposed Project Planning Area, and the Area of Potential Effects in the facility plan. This information will be used during the loan recipients' consultation with DEQ to determine whether the project is eligible for a categorical exclusion, finding of no significant impact or an environmental impact statement.

2. Preparation of Environmental Information Documents (EID). This will be the responsibility of the loan recipient. The EID will be an integral part of the facility plan.
3. Preparation of the Environmental Impact Statement. This too will be the responsibility of the loan recipient, under DEQ guidance.
4. Public Notices and Meetings. These activities will be handled by the loan recipient.
5. Mitigation Measures. The loan recipient will incorporate into its project any mitigation measures embodied in a Record of Decision, a Finding of No Significant Impact (FONSI), a Categorical Exclusion or the loan agreement.

D. ENVIRONMENTAL REVIEW RESPONSIBILITIES OF THE DEQ. The environmental review responsibilities of the DEQ include:

1. During early consultation, assess the possible environmental impacts of the project and notify the loan recipient of the type of environmental documentation that will be required.
2. Review and approve or disapprove the adequacy of environmental review documentation submitted by the loan recipient.
3. Document determinations in Categorical Exclusions, Findings of No Significant Impact, Records of Decision, Reaffirmation Notices and public notices.
4. Review for compliance with rules and Chapter 5 of the handbook.
5. Adopt the environmental documentation of a state or federal agency (e.g., EA or EIS), if appropriate, in developing DEQ's environmental determination.
6. If an environmental determination is more than five (5) years old, re-evaluate the initial submission with the current conditions then reaffirm the previous determination or determine if supplemental information is required.
7. Ensure the loan recipient abides by any mitigation measures embodied in a Finding of No Significant Impact or Record of Decision by incorporating such measures by reference into the loan agreement. If mitigation measures are not

met by the loan recipient, DEQ will conduct compliance follow-up in accordance with paragraph E below.

- E. COMPLIANCE FOLLOW-UP. Compliance with mitigation measures will be done through loan conditions. Failure to comply will be met with notice of non-compliance, payment withholding, grant/loan suspension or termination, or other remedies available to DEQ.
- F. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies “equivalent to” those in the Federal APA, the Idaho Environmental Protection and Health Act, specifically Idaho Code § 39-107(6) and the Idaho Administrative Procedures Act, Idaho Code § 67-5201, et seq., provide public remedies substantially similar to the Federal APA. Both the federal and state statutes provide minimum due process rights to any person aggrieved by DEQ: an impartial decision-maker, an administrative hearing with prior notice and an opportunity to be heard and judicial review on an administrative record of final agency decisions. Compare Idaho Code § 39-107(6), Idaho Code §§ 67-5201 et seq. with 5 USC 554 and 702.

ELEMENT 2: INTERDISCIPLINARY APPROACH AND ADHERENCE TO OTHER ENVIRONMENTAL LAWS

- A. EXPERTISE. Idaho realizes that responsiveness to a number of federal and state cross-cutting environmental concerns is an integral part of an environmental review process. Interdisciplinary expertise is available through federal and state agencies in Idaho for identifying, evaluating and interpreting these concerns and for evaluating preferred alternatives which avoid, minimize or mitigate undesirable project impacts.
- B. ADOPTING ANOTHER AGENCY’S ENVIRONMENTAL DETERMINATION. DEQ works jointly with other funding agencies by either issuing joint publications or concurring with the other agencies (primarily USDA RD) environmental determination. In an effort to assure that DEQ is in compliance with the EID checklist requirements, more specifically the Federal cross-cutting authorities, a review is completed on the environmental documentation that was used to make the environmental determination. If the document meets DEQ’s requirements then a concurrence is issued, if the document is not in compliance with the DEQ EID requirements, then a request is made for the needed information before an environmental determination is issued.
- C. INTERAGENCY REVIEW AND COORDINATION. Upon issuing a notice of intent to prepare an Environmental Impact Statement, the loan recipient will contact all potentially affected agencies to initiate the scoping process.

In the event an Environmental Impact Statement is required, the loan recipient must prepare and submit a draft Environmental Impact Statement to all parties identified during the facility planning process, including agencies responding to the scoping process. The loan recipient’s final Environmental Impact Statement must address all comments and concerns received from such agencies. Because DEQ has oversight and

ultimate responsibility for the review and the decision on the adequacy of the Final EIS, DEQ will retain oversight of the interagency review process of a final Environmental Impact Statement, until the loan recipient has addressed all comments and concerns.

As part of the preparation of an Environmental Information Document or a Request for Categorical Exclusion, the loan recipient must contact all potentially affected agencies. The loan recipient must address all comments and concerns received from such agencies in its Environmental Information Document or Request for Categorical Exclusion. DEQ will send copies of Notices of Categorical Exclusions, Findings of no Significant Impact and Records of Decision to affected state and federal agencies, tribal governments, and other interested parties and stakeholders.

40 CFR Part 6 identifies the scope of federal environmental concerns and objectives that must be addressed in any Tier I environmental review process. State and federal expertise in each of these areas is outlined below. The DEQ may delegate these items to the loan recipient if allowed.

Detailed procedures, to be used by the loan recipient or the DEQ in assessing the cross-cutting issues, are provided as an attachment to Chapter 5 (Form C) of Drinking Water Loan Account Handbook of Procedures.

1. Landmarks, Historical, Cultural and Archeological Sites. The Idaho State Historical Society, Historic Preservation Office is responsible for Idaho's participation in the National Register of Historic Places Program established by the National Historic Preservation Act of 1966. The Coeur d'Alene Tribe, the Nez Perce Tribe, and the Confederated Salish and Kootenai Tribes each have a designated Tribal Historic Preservation Officer (THPO) that serves as the lead as it relates to landmarks, historical, cultural and archeological sites within Tribal land and areas of Tribal cultural and religious concern. The THPO's must be contacted when work is proposed within their respective areas of concern. The Deputy State Historic Preservation Officer (SHPO) has been responsible in the past for evaluating proposed drinking water construction sites as to historic and archeological importance in accordance with 36 CFR 800. The deputy SHPO will continue to do so. Idaho's historic site review board, comprised of historians, architects, archeologists and geologists, evaluates to approve or reject all potential property nominations for the National Register of Historic Places.
2. Endangered Species and Essential Fish Habitat. DEQ will carry out any informal consultation required under the ESA as the EPA's designated non-Federal Representative. This includes U.S. Fish and Wildlife and NOAA's National Marine Fisheries Service (NMFS). Should a biological assessment be required, the DEQ or the SRF assistance recipient will prepare the required biological assessment under EPA's direction. As required by both the ESA and the applicable Fish and Wildlife Service Regulations, the EPA acknowledges that it retains ultimate responsibility for compliance with Section 7 of the ESA.

3. Fish and Wildlife Protection and Enhancement. The protection and management of fish and wildlife species, including those that are threatened and endangered, is primarily the responsibility of the Idaho Fish and Game Department. The activities of the Idaho Fish and Game Department and the U.S. Fish and Wildlife Service overlap to some extent on questions of fish and wildlife. Both agencies will be consulted for each loan project.
4. Wild and Scenic Rivers. The Bureau of Land Management (BLM) and the U.S. Forest Service have direct management and protection responsibilities on sections of several Idaho rivers where they flow through areas under the jurisdiction of either agency.
5. Flood Plains. The Idaho Department of Water Resources (IDWR) coordinates the National Flood Insurance Program (NFIP) in Idaho and is the department responsible for assisting with local regulations necessary for the flood insurance.
6. Farmland Protection. The DEQ will consult the U.S. Department of Agriculture to ensure the requirements of the Farmland Protection Policy Act are met. Properties proposed for drinking water construction will be evaluated as needed by field office agronomists at the various USDA Natural Resource Conservation Service offices around the state. This process will be initiated early in the facility planning stage of the project.
7. Wetlands. The U.S. Army Corps of Engineers (Corps) is the lead agency for the evaluation of proposed projects where encroachment on wetlands is likely. Upon notification by DEQ field staff, the Corps evaluates the impact of possible alterations to wetland areas as a result of drinking water construction. Typically, the U.S. Fish and Wildlife Service and the Idaho Fish and Game Department are consulted in this evaluation. Their expertise regarding threatened and endangered wetland species and/ or possible habitat destruction is an important part of wetland evaluation. One or more site visits usually occur. Mitigation measures to protect wetlands will be incorporated into projects in accordance with the requirements in any Clean Water Act §404 dredge and fill permits issued by the Corps.
8. Ground Water Protection. The EPA Office of Ground Water Unit (Region 10) will be conducting reviews of drinking water projects that will be situated over designated sole source aquifers and their source areas. DEQ will initially screen projects and may contact EPA directly or instruct the recipient to contact EPA.
9. Air Quality. The Idaho DEQ, Air Quality Division, administers an air quality monitoring and control program. The Air Quality Division evaluates proposed drinking water construction projects to determine compliance with an established state air quality implementation plan (SIP). This plan has been promulgated under Section 51.18 of 40 CFR, Part 51, and is being implemented on EPA projects in accordance with regulations in 40 CFR, Part 6, Subpart C.

ELEMENT 3: DOCUMENTATION OF PRELIMINARY/FINAL ENVIRONMENTAL REVIEW DETERMINATIONS

Decisions resulting from an environmental review will be fully documented by DEQ and will include information, processes and premises that influenced a determination. Documentation will be maintained to substantiate the lack of, as well as the existence of, potential impacts associated with a proposed project. Determinations that will be formally documented include:

1. Categorical exclusions;
2. Findings of No Significant Impact;
3. Judgment to reaffirm or modify a previously issued determination (i.e., categorical exclusion, FONSI or Environmental Impact Statement/Record of Decision) following a mandatory five-year environmental reevaluation of a proposed project; and
4. A determination to proceed, or not to proceed, with a project contained in a record of decision following the preparation of a full EIS.

ELEMENT 4: PUBLIC OUTREACH AND PARTICIPATION

Public participation steps must be accomplished before completion of the environmental review process. Loan applicants must conduct a public meeting prior to formal adoption of a facility plan to discuss the proposed facility, the selected alternative, environmental impacts and any needed mitigation measures.

In addition, DEQ will provide public notice and a thirty (30) day public comment period on all Notices of Intent to prepare an EIS, FONSI, draft EISs, Records of Decision or reaffirmations of a decision issued five (5) years earlier. (Refer to Element 1, Part F - Administrative Procedures Act.) Public notice will be provided for all Categorical Exclusions.

Public notice is defined for the purpose of the environmental review process as publication in a newspaper of community-wide circulation. Public notice will also be made by direct mailing to persons and agencies on the project mailing list.

ELEMENT 5: ALTERNATIVES GENERATION/EVALUATION

As part of the state's procedures for environmental reviews of projects funded through the Drinking Water State Revolving Fund, alternatives generation and evaluation are required. A comparative analysis of feasible alternatives, including the no-action alternative, is a required element of an approvable Environmental Information Document and EIS. Each alternative must be evaluated based on beneficial and adverse consequences to the existing environment, the future environment and on individual sensitive environmental issues that have been identified in advance through scoping (for an EIS only) or agency coordination or consultation. Near-term or

long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate. It is further required by the state's environmental review procedures that coordination with other municipal public works projects be considered during the alternatives generation and evaluation stages, including enhancing public recreation and open space opportunities.

An analysis of alternatives must include:

1. A no-action alternative;
2. An examination of direct, indirect, and cumulative impacts of the proposed action and alternatives, including the no action alternative;
3. An examination of the affected environment, including baseline conditions that may be impacted by the proposed action and alternatives; and
4. Land use and other social parameters that may be impacted by the proposed action and alternatives.

ELEMENT 6: OTHER ENVIRONMENTAL REVIEW PRINCIPLES

The following additional principles will be incorporated into the environmental review:

1. Purpose and need for facilities must be described based on population projections.
2. Cumulative impacts. will be evaluated within the context of a complete municipal drinking water treatment system, as well as other public works projects and future community growth (residential, commercial, industrial, etc.), within the study area.

For communities receiving project assistance for the first time, especially when the project is for less than a complete system, the environmental review will be based on impacts resulting from the entire system. An environmental review study area will be delineated in a manner which generally encompasses the complete service area of the final system envisioned to be in place at the planning horizon and outlying areas that may directly or indirectly be impacted by the completed system.

In situations involving improvements to be built as separate projects at different times, the environmental review associated with the first project will consider the anticipated cumulative impacts from later projects. When later projects are begun, the environmental review will only address changes to the anticipated impacts within the entire study area due to changes in facility plan design/engineering changes, or changes in the physical environment that occurred in the interim period.

ELEMENT 7: REPORTING REQUIREMENTS

Idaho will meet the annual reporting requirements for the Drinking Water State Revolving Fund program as outlined in the Capitalization Grant Agreement.

Further, the DEQ recognizes EPA Region 10 will continue the oversight responsibility of the State Environmental Review Process and review any changes thereto.

EXAMPLES OF COMMON FINDINGS (FONSI AND CATEGORICAL EXCLUSION)

1. FONSI

LEGAL NOTICE OF FINDING OF NO SIGNIFICANT IMPACT

Date: March 17, 2011

To: All Interested Government Agencies, Public Groups, and Individuals

Subject: Environmental Determination for the Ashton Drinking Water Improvement Project

In accordance with the Rules for Administration of Planning Grants for Drinking Water Facilities (IDAPA 58.01.22) and the Rules for Administration of Drinking Water Loan Program (IDAPA 58.01.20), an environmental review has been performed and a Finding of No Significant Impact (FONSI) issued by the Department of Environmental Quality (DEQ) for the following project:

Ashton Drinking Water Improvement Project
Fremont County
Ashton, Idaho

This environmental determination was made as a result of the review process indicating no significant environmental impacts would result from the proposed project. There may be several environmental effects from the referenced project as described below.

Short term impacts may occur during project construction that include temporary disruption of the distribution system, increased noise, increased dust pollution, increased potential for stormwater runoff, and disruption of localized traffic conditions. The project contractor is responsible for managing the temporary disruptions of the system as follows:

- Cultural Resources: The Shoshone-Bannock Tribe and the Shoshone-Paiute Tribe have requested a tribal monitor be present during ground disturbing activities. All ground disturbing activities shall cease if archeological artifacts and human remains are inadvertently discovered during construction and the State Historic Preservation Officer, the Shoshone-Bannock Tribe, and the Shoshone-Paiute Tribe shall be notified.
- Hazardous and Solid Waste Disposal: Any construction debris generated from the project should be disposed at an approved solid waste facility.
- Stormwater: Stormwater runoff shall be handled through an Environmental Protection Agency Stormwater Construction General permit and the development of a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP and stormwater BMPs will be implemented prior, during and after project construction to reduce the potential for erosion from runoff.
- Noise impacts from the project construction will be reduced by restricting work hours to reasonable times identified in the construction specifications.
- Any other appropriate BMPs, wherever possible, to avoid or minimize impacts from other construction activities.

The project contractor will also obtain appropriate permits as required by local, state or federal agencies for activities taking place during project construction.

Beneficial Impacts: Overall, the completion of the proposed project will have long term positive effects by reducing the nitrate levels in the city's drinking water supply and providing fire flow capacity.

Description of Project: The proposed project involves the construction of an ion-exchange drinking water treatment system. The building that will house the treatment system will be a 40' x 50' building constructed in the location of the existing well #1 pump house. The new building will house a new well pump, controls, and the chlorination system. Additional system improvements will address fire flow capacity and the overall condition of the distribution system by replacing undersized water mains, broken fire hydrants, lead-joint pipes, and broken isolation valves. A total of 12,600 feet of 4 inch or smaller pipeline will be replaced following the same alignment as the existing lines with the exception of 500 feet at the east end of Walnut Street and along Railroad Avenue. The project will also include the installation of new water meters with radio read capacity.

Copies Available: Copies of the *full* FONSI, the facility plan and the Environmental Information Document upon which it is based are available for public examination at the following locations:

Department of Environmental Quality State Office
Division of Water Quality
1410 North Hilton
Boise, Idaho 83706
Grant/Loan SERP Coordinator: Ester Ceja
208-373-0585

Department of Environmental Quality
Idaho Falls Regional Office
900 N. Skyline, Ste. B
Idaho Falls, Idaho 83402
Regional Office Contact: Willie Teuscher, P.E.
208-528-2666

City of Ashton
714 Main Street
Ashton, Idaho 83420
Contact: Mayor Stronks
208-652-3987

Public Comments: Comments supporting or disagreeing with this decision may be submitted to the following address at DEQ for consideration:

Ester Ceja, Department of Environmental Quality, Water Quality Division, Loan Program, 1410 N. Hilton Street, Boise, Idaho 83706.

Such comments must be postmarked or delivered on or before April 22, 2011. Public comments will be considered in finalizing the planning phase of the project. No administrative action will be taken on the project for at least thirty (30) calendar days from the date of publication.

2. CATEGORICAL EXCLUSION

LEGAL NOTICE OF REVISED CATEGORICAL EXCLUSION FOR THE CITY OF KIMBERLY DRINKING WATER SYSTEM IMPROVEMENT PROJECT

The Idaho Department of Environmental Quality (DEQ) has determined that the City of Kimberly Drinking Water Improvement Project, Twin Falls County, Idaho conforms to the Rules for Administration of the Drinking Water Loan Program (IDAPA 58.01.20) and Chapter 5, of the *Drinking Water Loan Handbook of Procedures*, by which the project is eligible for a Categorical Exclusion. Accordingly, Phase 1 and Phase 2, priority 2 and priority 3 distribution system improvements of the project are exempted from further substantive environmental review requirements.

The proposed drinking water improvements will address water source, water supply, and water storage issues. An additional well will be added to the city's existing water supply system. The city is also proposing the construction of two new storage tanks, improvements to the distribution system, and the installation of a water metering system. The specific project improvements include:

- Development of well #7 located at the Kimberly City Park.
- Construction of a well house next to well #7, including the pump-to-waste discharge pipe.
- Replacement of the existing Redwood Storage Tank with a new 660,000 gallon tank at the existing location.
- Construction of an additional 880,000 gallon storage tank at one of two locations. The first location is the northeast lot of the intersection of Monroe and Ash Streets. The second location is at the City Park near the well #7.
- Installation of water meters and replacement of service lines from the mains to the water meters.
- Upgrading the existing supervisory control and data acquisition (SCADA) system.
- Installation of standby generators at well #7, the City Hall booster pump station, and the Redwood booster pump station.
- Phase 1 distribution system upgrades including waterline replacements on Center Street West, Banning Street, Maxine Street, and Van Buren to Pine Street.
- Phase 2, priority 2 distribution system upgrades include waterline replacements on east Center Street, Main Street, Ash Street, Emerald Drive, east of the City Hall pump station, the completion of some of the dead end lines, and the completion of the 10-inch connection in the southern residential area.
- Priority 3 distribution system improvements include replacing the remaining 4 inch lines with larger diameter mains, looping the dead end lines, and connecting all fire hydrants to 6-inch mains or larger.

DEQ has determined that this project is consistent with criteria for issuing a Revised Categorical Exclusion for the following reasons:

- The proposed facility improvements are solely directed toward minor rehabilitation of the existing facilities and construction of new ancillary facilities.
- The facility improvements will not provide the capacity to serve a population that is projected to grow at a rate 25% in excess of the 20-year population growth rate expectations for the state as a whole according to the Idaho Division of Financial Management projections, and be expected to change the current system's population by greater than 500 estimated residential units (ERUs).
- There will be no significant effect on the quality of the human environment either individually,

cumulatively over time, or in conjunction with other federal, state, local or private actions as a result of this project.

- There will be no direct or indirect affects to (a) cultural resource sites; (b) endangered or threatened species or their habitats; (c) environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones; or (d) other resource areas identified in DEQ's guidance.

Short term impacts may occur during project construction that include temporary disruption of the distribution system, increased noise, increased dust pollution, increased potential for stormwater runoff, and disruption of localized traffic conditions. The project contractor is responsible for managing the temporary disruptions of the system as follows:

- Air Quality: Temporary dust pollution impacts will be controlled as a condition of the construction specifications in accordance with the DEQ Rules for the Control of Air Pollution in Idaho, IDAPA 58.01.01.651 (rule). The rule states that reasonable precautions for dust control and suppression include using water or chemicals, applying dust suppressants, covering trucks, paving, and removing materials. In addition to the rule requirements, it is recommended that a dust prevention and control plan be implemented during construction of the project that includes DEQ Best Management Practices (BMPs) to minimize dust pollution for fugitive dust control.
- Cultural Resources: If archeological artifacts and human remains are inadvertently discovered during construction, ground disturbing activities shall cease and the State Historical Preservation Officer must be notified.
- Stormwater: Stormwater runoff shall be handled through an Environmental Protection Agency Stormwater Construction General permit and development of a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP and stormwater BMPs will be implemented prior, during and after project construction to reduce the potential for erosion from runoff.
- Any other appropriate BMPs, wherever possible, to avoid or minimize impacts from other construction activities.

Overall, completion of the proposed project will have long term positive effects by reducing leaks, conserving water, improving fire flows, providing additional water supply and water storage. The proposed project will protect public health.

Copies of the full Revised Categorical Exclusion and the facilities plan upon which it is based are available for public review at:

Department of Environmental Quality
Water Quality Division
1410 North Hilton Street
Boise, Idaho 83706
Grant/Loan SERP Contact: Ester Ceja
208-373-0585

Department of Environmental Quality
Twin Falls Regional Office
1363 Fillmore Street

Twin Falls, Idaho 83301
Regional Office Contact: Brian Reed, P.E.
208-736-4259

City of Kimberly
132 N. Main Street
Kimberly, Idaho 83341
City Contact: Mayor David Overacre
208-423-4151

**STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
LOAN OFFER, ACCEPTANCE AND AGREEMENT
FOR DRINKING WATER TREATMENT
DESIGN AND CONSTRUCTION**

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by Title 39, Chapter 36 (Act), Idaho Code, to make loans from the Drinking Water Treatment Facility Loan Account (Account) to assist municipalities in the construction of drinking water treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the City of XXXXXX (Applicant/Borrower) has established eligibility for a loan under the terms of the Act and IDAPA 58.01.20, the Idaho Rules for Administration of Drinking Water Loan Program (the Rules).

The Applicant is a public entity with the authority to finance public improvements. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Rules.

SECTION II. DESCRIPTION OF PROJECT

This loan offer is for design and construction of the following project:

- A. Loan Project Number: TBD
- B. Name and Address of Applicant: City of XXXX
Address
City, Idaho 83XXX
- C. Project Description: Enter description
- D. Terms: \$XXXXXXX at X.X% (interest of X.XX% and loan fee of X.XX%) to be repaid in biannual installments over XX years, with \$XXXX of principal forgiveness (for total principal repayment of \$XXX,000).

E. Estimated Project Budget:

1.	Transmission & Distribution	\$XXXXXX
2.	Storage	\$XXXXXX
3.	Source Development (Well)	\$XXXXX
	Total	\$XXXXXX

SECTION III. GENERAL CONDITIONS

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan agreement (Agreement) and the Applicant shall become a Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this Agreement to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director). To not enter into sale, lease or transfer of any of the property related to the Agreement. To not make any additional material encumbrances to the project without the prior written consent of the Director. To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this Agreement without the prior written consent of the Director. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.
- B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this Agreement.
- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Borrower in support of the request for this loan. Which application is attached hereto and incorporated by reference herein.
- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.
- E. To make efforts to award subagreements to Disadvantaged Business Enterprises (DBE) which

includes Minority and Women-owned businesses (MBE/WBE).

- a. The separate fair share goals for MBE and for WBE will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals; and,
- b. Semi-annual reports of MBE/WBE utilization will be prepared on forms supplied by the Department; and,
- c. Include the following language in all procurement contracts *“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”*

- F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is to be constructed. Clear title or legal right to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project.
- G. To take affirmative action to ensure that the project shall be completed and operated in conformance with federal and state laws relating to occupational health and safety.
- H. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- I. That in the event there is any default in the payment of either the principal amount, loan fee or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest and fees are due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest and fee rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- J. That any waiver by the Department at any time of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.
- K. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- L. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.
- M. To comply with all applicable federal, state and local laws.

- N. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.
- O. The total loan funds disbursed per this Agreement are considered federal financial assistance per the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA), 31 U.S.C. §§7501-7507. (2000). If Borrower expends more than \$500,000 of any federal funds in a fiscal year, Borrower shall conduct an audit in accordance with the SAA. In such case, Borrower shall provide the Department a copy of the SAA audit within nine (9) months of the end of the audit period per the SAA. Borrower recognizes that it is responsible for determining if the \$500,000 threshold is reached and if a SAA audit is required. Additionally, Borrower shall inform the Department, in writing, of findings or recommendations pertaining to the State Revolving Fund contained in any SAA audits conducted by Borrower.

SECTION IV. PROJECT MANAGEMENT

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.
- B. Comply with the Public Works Contractors License Act and the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.
- E. Provide for the accumulation of funds through charges made for services or otherwise, for the purposes of (1) establishing a fund dedicated solely to the repayment of principal, interest and loan fee on this loan, (2) capital replacement and (3) future improvement, betterment, and extension of such works occasioned by increased usage on the facility.
- F. Provide a plan and program for an equitable user charge system, as permitted by law, for payment of operation and maintenance of constructed facilities. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment. Make available

on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve.

- G. Develop and adopt a water system protection ordinance approved by the Department prior to receiving final payment of loan funds.
- H. Provide to the Department for approval, an operation and maintenance manual for the project. The manual shall be approved by the Department prior to receiving final payment of loan funds.
- I. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- J. Assure that the operator in responsible charge of the facility has a level of competency commensurate with the nature of the facility. He or she must be certified as a Drinking Water Operator in a class equal to or greater than that of the facility.
- K. Assure that distribution and treatment facility personnel shall participate in operator training programs designed to assure competence in the operation and maintenance of the facility.
- L. Commence satisfactory operation and maintenance of the drinking water treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the facility without the written approval of the Department.
- M. Review and update the user charge system, as permitted by law, at least biennially during the life of this Agreement to assure that all costs including debt retirement, operation and maintenance are offset by sufficient revenues.
- N. Maintain project accounts in accordance with generally accepted accounting principles.
- O. All laborers and mechanics employed by the prime construction contractor and subcontractors in the project using State Revolving Fund (SRF) loans shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality in accordance with the labor standards, including prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV of Chapter 31 of title 40, United States Code). Borrower agrees that all procurement contracts must include as a term and condition that contractors and subcontractors must obtain wage determinations from the Department of Labor and comply with Department of Labor guidance and regulations implementing wage rate requirements applicable to SRF funds. Wage determinations shall be finalized prior to final bid submissions. Specific requirements related to Davis Bacon compliance are included in Attachment B to this loan agreement.

SECTION V. SPECIAL CONDITIONS

- A. The Borrower shall complete the attached project schedule and submit to the Department for approval on or before 60 days from the date of this loan offer. No funds shall be disbursed per this Agreement until a project schedule has been approved by the Department. The Department

approved project schedule shall be attached to this Agreement as Attachment A and incorporated by reference as if fully set forth herein. The Borrower shall complete the project in accordance with the approved project schedule.

- B. All amendments to the project schedule must be approved by the project engineer in the Department's XXXX Regional Office, prior to becoming effective.
- C. Prior to final loan distribution, the Borrower shall have established a written:
 - a. XXXXX
 - b. XXXX
- D. Attachment B (Davis Bacon conditions) is incorporated by reference into this loan agreement.
- E. (Add any mitigation measures required by environmental determination of EID)

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

- A. This loan will be evidenced and secured by a promissory note in the amount of \$XXXXXX (WRITE OUT dollars). The promissory note will be issued upon project completion and incorporated by reference into this Agreement.
- B. There will be a reserve fund equal to one year's payment of principal, fees and interest on the loan established. The Borrower has ten years to establish the reserve, setting aside 10% (ten percent) of one year's payment into the reserve fund each year.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.
- C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.

- E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.
- F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
 - 1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department, (b) an operations manual has been completed and (c) that the project is fully operational; and
 - 2. The Department has inspected the project and verifies the engineer's certification.
- G. Payment of the final ten percent (10%) of this loan shall be withheld until the following requirements are met:
 - 1. The Department has determined that all other terms and conditions, not mentioned in Section VII.F, of this Agreement have been met; and
 - 2. A responsible charge operator (RCO) has been designated who is licensed at or above the classification level of the system. At such times as the RCO is not available, a substitute RCO shall be designated to replace the RCO, who is licensed at or above the classification level of the system.
- H. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Borrower the offered sum of money on the basis of the Borrower's priority position immediately upon the accrual of said sum in the Account.

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the promissory note which shall be attached to this Agreement and incorporated by reference.
- B. To pay biannual payments of principal, fees and interest and to fully amortize this loan not later than thirty (30) years from project completion. Interest will begin accruing with the first disbursement of funds. At the time of closing, accrued interest will be either paid to the Department or incorporated into the final loan amount if the approved amount has not been exceeded.
- C. At the time of closing, the Department may elect to impose a loan fee (not to exceed 1%) pursuant to the Rules. If a loan fee is imposed, the loan interest rate will be reduced by the amount of the loan fee. The loan fee will be assessed against the final loan balance, which

shall include the entire principal balance and may include capitalized interest. Any loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period.

- D. This Agreement shall remain in full force and effect until all loan proceeds, including principal, interest and loan fee, have been paid in full or the Agreement is otherwise suspended or terminated by the Department.

SECTION IX. SUSPENSION OR TERMINATION OF LOAN AGREEMENT

- A. The Director may suspend or terminate this Agreement prior to final disbursement for failure of the loan recipient or its agents, including engineering firm(s), contractor(s), or subcontractor(s) to perform. This Agreement may be suspended or terminated for good cause including, but not limited to, the following:
1. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any form of tortious conduct; or
 2. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or
 3. Violation(s) of any term of this Agreement; or
 4. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or
 5. Utilizing a contractor or subcontractor who has been suspended or debarred by order of any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this Agreement. The notice of intent shall state:
1. Specific acts or omissions which form the basis for suspension or termination; and
 2. Availability of a contested case hearing before the Board of Environmental Quality conducted as provided for in the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23.
- C. If the Borrower does not initiate a contested case hearing before the Board by filing a petition within the time period specified by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23., the Department may thereafter terminate or suspend the Agreement by written notice to the Borrower. If the Borrower initiates a contested case, the termination or suspension shall be determined by the Board.

- D. The Borrower shall perform no work under the Agreement after receiving a notice of intent to suspend or terminate until all administrative proceedings and appeals therefrom are final or the Department reinstates the Agreement as provided herein.
- E. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the Agreement. If a suspended Agreement is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.
- F. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.

SECTION X. ACCESS AND INDEMNIFICATION

The Borrower agrees to:

- A. Provide the Director, or his/her authorized agents, and the U.S. Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan.
- B. Indemnify and hold harmless the State of Idaho, 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.

SECTION XI. OFFER

The offer set forth herein must be accepted, if at all, on or before 60 days from the date of this loan offer. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated Month ____, 201X.

Toni Hardesty
Director
Department of Environmental Quality

SECTION XII. ACCEPTANCE

The (name of applicant), by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

Signature of Representative

Name and Title of Representative - type or print

Date

DISBURSEMENT PROCESS

