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

March 27, 2018

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Section 1.0 General

1.1 PURPOSE

This Operating Agreement for Management of the Drinking Water State Revolving Fund (DWSRF)(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 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 DWSRF , prescribed by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12). DEQ will use the DWSRF Account to administer the 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 DWSRF PROGRAM

The primary objective of the DWSRF 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 76 et seq.) is Attachment 1.

D. DEQ has adopted rules for the operation of the DWSRF (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 DWSRF. 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 DWSRF 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 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 Agreement in conformance with applicable Federal laws and regulations.

DEQ AGREES TO:

A. Comply with Idaho Code Title 39 Chapter 76 and other applicable State laws. Revise the DWSRF , 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 DWSRF , 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 DWSRF capitalization grant payments in accordance with a negotiated payment schedule.

H. Deposit into the DWSRF 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 DWSRF.

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 DWSRF back to the DWSRF. Maintain the DWSRF as a dedicated account or series of accounts. Credit all fee payments to the fee account.

Q. Maintain the DWSRF 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 DWSRF 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 DWSRF web site at http://epa.gov/ovm/cwfinance/cwsrf/enhance/DocFiles/Other°/020Docs/CrosscutterHandbook.pdf.

T. Apply the environmental review requirements of DEQ's rules and environmental review procedures to all projects receiving assistance from the DWSRF. All DWSRF funded projects must undergo environmental review. DEQ's State Environmental Review Process (SERP) is Attachment 3 to this Agreement.

V. 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 DWSRF assistance recipient or may carry it out in cooperation with the DWSRF 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 DWSRF.

W. Make available for EPA audit or review DEQ records relating to the DWSRF.

X. Require DWSRF assistance recipients to make their records available, if necessary, for EPA review.

Y. 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.

Z 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 as way as to protect the long-term revolving nature of the DWSRF.

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.

F. Provide DEQ with permit information relating to individual projects, including discharge limitations.

G. 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).

H. 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 DWSRF 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 DWSRF. 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 may provide the annual audit of the DWSRF.

3.2. STAFFING AND MANAGEMENT

A. DEQ will provide the staffing and training necessary to administer the DWSRF.

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.

C. The Legislative Auditor or an independent auditor will conduct an annual audit or agreed upon procedure (AUP) of the DWSRF and its operations. This audit or AUP will follow procedures specified in the General Accountability Office Standards for Audit of Governmental Organizations, Programs and Functions, or under procedures approved by General Auditing Standards. The related 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 DWSRF 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 DWSRF 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 completion of the SERP.

If a facility plan and SERP have been completed, 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 an offer of funding assistance. Assistance 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 assistance recipients with an insert, detailing DWSRF requirements, for the bid package. The engineers also review bid tabulations and approve awarding of bids.

DWSRF 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 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 he 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.

Assistance recipients will be supplied with disbursement request forms by the DEQ. Disbursements will be made after 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 recipient'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. Recipient's acceptance of construction.

4.4. FEES

The DEQ has the authority to assess (IDAPA 58.01.20.032) a 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 DWSRF effort as approved by EPA (e.g. capacity development related planning grants). 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 IUP. The fee rate will be set such that it does not jeopardize the long-term perpetuity of the fund.

4.5 TRANSFERS

The Governor has the authority under CFR 35.3530 (c) to reserve and make transfers between State Revolving Funds per CFR 35.3530(c). Initially transfer authority lasted only through 2002; however, in 2006 the Congress passed legislation making the transfer authority permanent. The DEQ Board of Environmental Quality has authority under Idaho Code, Title 39, Chapter 36 and Chapter 76 to transfer funds between SRF accounts. Transfers will be reported via the IUP, National Information Management System, Financial Statements, Annual Reports, Clean Water Benefits Reporting and Drinking Water Project Benefits Reporting databases.

The total amount that can be transferred is equal to 33 percent of the running total of all DWSRF capitalization grants, this total includes any amounts awarded for set-aside activities. This ceiling applies to transfers regardless of fund (i.e. may apply to transfers from the CWSRF to the DWSRF, and from the DWSRF to the CWSRF).

Section 5.0 Program Documents and Reports

5.1. INTENDED USE PLAN

DEQ will develop an annual IUP that identifies the intended uses of DWSRF 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 DWSRF 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 IUP as well as how the DEQ has used the DWSRF 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 Agreement and/or grant conditions.
5. Explanation of any program changes, both in the IUP 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 IUPs.
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 DWSRF 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 Agreement does not direct or apply to any person outside of DEQ and EPA.

6.4. APPROVAL AND EFFECTIVE DATE

This 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:

John H. Tippets
Director
Idaho Department of Environmental Quality

3/26/2018
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Christopher Hladick, Regional Administrator
U.S. Environmental Protection Agency, Region 10

4/30/2018
Date

Idaho Statutes

Print F Attachment 1

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.

History:

[39-7601, added 1997, ch. 26, sec. 2, p. 40.]

How current is this law?

Search the Idaho Statutes and Constitution

Idaho Statutes

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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 form 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.

History:

[39-7602, added 1997, ch. 26, sec. 2, p. 40; am. 2001, ch. 103, sec. 71, p. 311.]

How current is this law?

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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 67-1210, 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; fund transfers from the wastewater facility loan account; and any moneys which may hereafter be provided by law.

History:

[39-7603, added 1997, ch. 26, sec. 2, p. 42; am. 2014, ch. 59, sec. 3, p. 142.]

How current is this law?

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Idaho Statutes

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.

History:

[39-7604, added 1997, ch. 26, sec. 2, p. 43.]

How current is this law?

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Idaho Statutes

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.

History:

[39-7605, added 1997, ch. 26, sec. 2, p. 43.]

How current is this law?

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Idaho Statutes

TITLE 39
HEALTH AND SAFETY
CHAPTER 76
PUBLIC DRINKING WATER SYSTEM LOANS

39-7606. PUBLIC WATER SYSTEM SUPERVISION FUND. (1) There is hereby created in the state treasury the public water system supervision fund. Moneys in the fund shall consist of fees assessed pursuant to rules of the department on regulated public drinking water systems, federal funds which are received by the state to provide for the public water system supervision program, donations, state appropriations and any other moneys from whatever source.

(2) Idle or surplus moneys in the public water system supervision fund established by this section shall be invested by the state treasurer in the manner for idle state moneys in the state treasury as provided for in section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the fund. Moneys in the fund may be expended pursuant to appropriation.

History:

[39-7606, added 2000, ch. 165, sec. 1, p. 416.]

How current is this law?

Search the Idaho Statutes and Constitution

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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 annual capitalization grants 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.). (3-29-12)

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, www.deq.idaho.gov. (4-2-08)

006. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 1, Title 74, 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 loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-29-12)

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), treatment facility(ies), or a combination of source(s) and treatment facility(ies) to the consumer. Chlorination may be considered as a function of a distribution system. (3-29-12)

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. 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)

16. Environmental Information Document (EID). Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-29-12)

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

18. Finding Of No Significant Impact (FONSI). A document prepared by the Department 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. (3-29-12)

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

20. Ineligible Costs. Costs which are not eligible for funding pursuant to these rules. (3-29-12)

21. Loan Recipient. An applicant who has been awarded a loan. (3-29-12)

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

23. **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)

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

25. **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)

26. **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)

27. **Operation and Maintenance 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. (3-29-12)

28. **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)

29. **Planning Document**. A document which describes the condition of a public drinking water system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using loan funds are provided in Section 030 of these rules and in the Handbook. (3-29-12)

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. Sustainability. Sustainability will include efforts for energy and water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement. (3-29-12)

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

41. 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)

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, sustainability criteria, water quality criteria, and condition of the existing system. (3-29-12)

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 numerical points system. Priority criteria shall contain the following points: (3-29-12)

a. Public Health Hazard. Any condition which creates, or may create, a danger to the consumer's health, which may include any one or more of the following, may be awarded a maximum of one hundred (100) points: (3-29-12)

i. Documented unresolved violations of the primary drinking water standards including maximum contaminant levels, action levels, and treatment techniques (to include maximum contaminant levels for acute and chronic contaminates); (3-29-12)

ii. Documented unresolved violations of pressure requirements; (3-29-12)

iii. Documented reduction in source capacity that impacts the system's ability to reliably serve water; or (3-29-12)

iv. Documented significant deficiencies (e.g., documented in a sanitary survey) in the physical system that is causing the system to not reliably serve safe drinking water. (3-29-12)

b. General Conditions of Existing Facilities. Points shall be given based on deficiencies (which would not constitute a public health hazard) for pumping, treating, and delivering drinking water. (up to sixty (60) points) (3-29-12)

c. Sustainability Efforts (e.g., prospective efforts at energy conservation, water conservation, extending the life of capital assets, green building practices, and other environmentally innovative approaches to infrastructure repair, replacement and improvement). (up to fifty (50) points). (3-29-12)

d. Consent Order, Compliance Agreement Schedule, or Court Order. Points shall be given if the system is operating under and in compliance with a Consent Order, Compliance Agreement Schedule, or Court Order and the proposed construction project will address the Consent Order, Compliance Agreement Schedule, or Court Order. (up to thirty (30) points) (3-29-12)

e. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (up to ten (10) points) (3-29-12)

f. Affordability. Points shall be given when current system user charges exceed state affordability guidelines. (ten (10) points) (3-29-12)

03. Rating Forms. Rating criteria for Subsection 020.02 is set forth in a rating form that is available in the Handbook. (3-29-12)

04. Priority List. A list shall be developed 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. (3-29-12)

a. 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)

b. 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)

c. 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. An eligible applicant that is bypassed shall be notified in writing of the reasons for being bypassed. (3-29-12)

05. Amendment of Priority List. The Director may amend the Integrated Priority List as set forth in Section 995 of these rules. (3-29-12)

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 user rater for drinking water service for residential customers which exceeds one and one-half percent (1½%) of the applicant community's median household income. The annual user rate would be

based on all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades). 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. (3-29-12)

02. Adjustment of Loan Terms. DEQ will equally apportion funds available for principal forgiveness to all prospective disadvantaged loan recipients. Consistent with achieving user rates of one and one-half percent (1½%) of the applicant community's median household income, and where possible with available funds, loan terms may be adjusted in the following order: increasing the repayment period, decreasing the interest rate, and providing principal forgiveness. (3-29-12)

a. Increasing Repayment Period. 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 user rate equals one and one-half percent (1½%) of median household income. (3-29-12)

b. Decreasing Interest Rate. If at a thirty (30) year repayment, the annual user rate 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 user rate equal to one and one-half percent (1½%) of median household income. The interest rate may be reduced to as low as zero percent (0%). (3-29-12)

c. Principal Forgiveness. If even at zero percent (0%) interest and a thirty (30) year repayment, the annual user rate 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 fifty percent (50%) of the total loan. Principal forgiveness terms may be revised (from initial estimates established in the annual Intended Use Plan) based upon final construction costs, such that loan terms do not result in user rates that are below one and one-half percent (1½%) of the applicant community's median household income. (3-29-12)

022. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a drinking water facility planning document which identifies the cost effective and environmentally sound 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. (3-29-12)

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

a. Step 1. Planning document 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; (3-29-12)

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 planning document and approved by the Department. If the planning document has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," then the loan recipient shall provide an opportunity for the public to comment on the draft planning document. The public comment period shall be held after alternatives have been developed and the Department has approved the draft planning document. The loan recipient shall provide written notice of the public comment period and hold at least one (1) public meeting within the jurisdiction of the loan recipient during the public comment period. At the public meeting, the draft planning document shall be presented by the loan recipient with an explanation of the alternatives identified. The cost effective and environmentally sound alternative selected shall consider public comments received from those affected by the proposed project. After the public meeting and public comment period, the final alternative will be selected and the Environmental Information Document will be prepared. (3-29-12)

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 assess a loan fee based upon each loan recipient's total interest rate. 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: (3-29-12)

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. As applicable, be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (3-29-12)

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 preparation of the planning document, a schedule for completion of the work tasks, and an estimate of staff hours and costs to complete the work tasks. (3-29-12)

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

i. Planning document including a final environmental document and decision in accordance with Section 042; (3-29-12)

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 water system protection ordinance and financial management system; and (3-29-12)

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 costs; (3-29-12)

b. Reasonable costs; and (3-29-12)

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, planning document, and any other relevant information in the application that describes the scope of the project to be funded. (3-29-12)

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 lump sum 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. Site acquisition costs from a willing seller, including right of way and the site for public water system; and (3-29-12)

t. 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; (3-29-12)

i. Engineering costs incurred without professional liability insurance; (3-29-12)

j. Reserve funds; (3-29-12)

k. Cost of refinancing existing indebtedness; and (3-29-12)

l. Costs incurred prior to the loan acceptance unless specifically approved in writing by the Department. (3-29-12)

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 loan recipient shall complete an environmental review as part of and in conjunction with a planning document. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The loan recipient 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 loan recipient shall complete one (1) of the following per the Department's instruction: (3-29-12)

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; or (3-23-98)

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

02. **Categorical Exclusions**. If the loan recipient requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (3-29-12)

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 planning document can be approved and the loan award can proceed. (3-29-12)

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 loan recipient to prepare an EID.

(3-29-12)

03. Environmental Information Document Requirements. When an EID is required, the loan recipient shall prepare the EID in accordance with the following Department procedures: (3-29-12)

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 planning document. (3-29-12)

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the loan recipient shall: (3-29-12)

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 meeting which may be in conjunction with a planning document meeting; and (3-29-12)

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 loan recipient 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 loan recipient. The loan agreement can be completed once the final EIS has Department approval. (3-29-12)

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, once completed by the Department, are valid for five (5) years from the date of completion. 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: (3-29-12)

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)

10. Exemption From Review. Loan projects may be exempt from certain federal crosscutting authorities at the discretion of the Department as long as in any given year the annual amount of loans, equal to the most recent federal capitalization grant, complies with all of the federal crosscutting authorities. (3-29-12)

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 planning documents, 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; (3-29-12)

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 and omissions 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; (3-29-12)

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 loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (3-29-12)

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 loan recipient may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-29-12)

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 loan recipient. 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. (3-29-12)

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.

01. Conditions for Waiver. 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 recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. (3-29-12)

a. Health Hazard. A significant public health hazard exists; or (3-29-12)

b. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted. (3-29-12)

02. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the loan recipient requesting the waiver. (3-29-12)

996. -- 999. (RESERVED)

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Form 5-B
DEQ Environmental Review Procedure for Projects Funded through the Drinking Water State Revolving Fund (DWSRF) Loan Program

A. PROGRAM PROTOCOL

The Idaho Department of Environmental Quality (DEQ) will be guided by 40 CFR Part 6 and will implement a "National Environmental Policy Act (NEPA)-like" process. 40 CFR Part 6 identifies the scope of federal environmental concerns and objectives that must be addressed for equivalency projects, or those that receive federal monies. When no federal monies are used for funding, an alternative process is followed (see Section K of this document).

Federal "cross-cutting requirements" are those provisions in federal law which "apply by their own terms" to projects and activities receiving federal financial assistance.

ENVIRONMENTAL AUTHORITIES

- Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348, as amended
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Protection Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, Pub. L. 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

ECONOMIC AND MISCELLANEOUS AUTHORITIES

- Demonstration Cities and Metropolitan Development Act of 1966 PL 89-754, as amended
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738 Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants and Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549

Conversely, those projects that are funded with state recapitalization dollars cannot be required by DEQ to be in compliance with these requirements; however, there are Social Policy

Authorities that are required of all projects. DEQ recognizes that it is crucial that all projects adhere to federal, state, and local requirements for construction and recommendations are noted in agency determinations.

SOCIAL POLICY AUTHORITIES

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L 92-5200 (Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

B. PROCEDURE

The following DEQ procedures are for the identification and analysis of the environmental impacts created by construction of drinking water facilities funded wholly or in part by the DWSRF.

C. TERMINOLOGY

Terms used in this section of the handbook will be consistent in large part with those used in the NEPA regulations. Terms are defined as follows:

1. "Affecting" means acting upon.
2. "Applicant" means any community or other eligible entity (as defined by the Rules for Administration of Drinking Water Loan Program, IDAPA 58.01.20; and the Rules for Administration of Planning Grants for Drinking Water Facilities, IDAPA 58.01.22), who files an application for a DWSRF loan or a state planning grant.
3. "Area of Potential Effects" is the geographic area or areas (that do not have to be contiguous to the project boundaries) within which the project may cause indirect or direct alterations in the character or use of a property. This includes all direct and reasonably foreseeable indirect effects.
4. "Categorical exclusion" is the category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental information document nor an environmental impact statement is required.
5. "Categorical exclusion support document" is a written environmental assessment for the category of actions that have been excluded and for which the position has been validated by supporting documentation from appropriate consulted agencies.
6. "Cooperating agency" means any agency, other than DEQ, as the identified lead agency, which has jurisdiction by law or expertise with respect to any environmental impact involved in a major federal action significantly affecting the quality of the human

environment. Any such agency, or when the effects are on a reservation, an Indian Tribe, may, by agreement with DEQ, become a cooperating agency.

7. "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

8. "Effects" are results or outcomes. Two types of effects are discussed in this document:

   a) *Direct*, which are caused by the action and occur at the same time and place.

   b) *Indirect*, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water and other natural systems, including ecosystems.

   Effects and impacts as used in this handbook are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

9. "Environmental assessment" is a concisely written public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; aids DEQ's compliance with the State Environmental Review Process (SERP) requirements when no environmental impact statement is necessary and shall include (a) brief discussions of the need for the proposal, (b) summary of alternatives as required by federal and state rules, (c) summary of the environmental impacts of the proposed action and alternatives with a brief discussion of potential mitigation measures, and (d) a listing of agencies and persons consulted. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects.

10. "Environmental information document (EID)" means any concisely written environmental assessment prepared by an applicant or consultant briefly describing the environmental impacts of a proposed drinking water construction project. This document will enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if a FONSI is warranted, or if the project is not feasible. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects. Required contents of the EID are fully described in Section H, Step 3 of this form.

11. "Environmental review" means the overall process undertaken by DEQ on each potential grant project and potential DWSRF loan project to determine whether the project may have a significant impact on the environment, requiring implementation of mitigation measures.

12. "Excluded action" includes those conditions or activity that allows a project to qualify for a categorical exclusion.

13. "Extraordinary circumstances" means those circumstances listed in 40CFR§6.204 that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded. The project SERP reviewer assesses the potential for all extraordinary circumstances to be mitigated to a level below significance either through permitting requirements or as a condition of the SERP decision.

14. "Federal agency" means all executive agencies of the federal government. It does not mean the Congress, the Judiciary, or the President (including the performance of staff functions for the President in his Executive Office).

15. "Finding of no significant impact (FONSI)" means a document, prepared by DEQ, briefly presenting the reasons why an action, not categorically excluded, will not have a significant effect on the human environment and for which an environmental impact statement is not prepared. It shall include the environmental assessment or a summary of it, will generally detail mitigation measures, and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

16. "Floodplain" is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of a one hundred (100)-year flood. The 100-year flood is defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CRF 258.11.

17. "Floodway" is the channel of a river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with a 100-year flood.

18. "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (see definitions of "effects").

19. "Loan" means a financing instrument (note or bond) by written agreement from the DWSRF.

20. "Mitigation" includes:

    a) Avoiding the impact altogether by not taking a certain action or parts of an action

    b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation

    c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment

    d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action

    e) Compensating for the impact by replacing or providing substitute resources or environments

21. "One hundred (100) year flood" is also referred to as the base flood or the regulatory flood. This refers to an area where there is a one percent (1%) chance that a flood may occur or be exceeded in any given year. The 100-year flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed

22. "Planning area" relates to the geographical, jurisdictional or political boundaries of the area identified in the planning document or facility planning study area that is anticipated to be served by the proposed project upon completion and for the life of the project (20 years minimum for drinking water treatment facilities and 40 years minimum for drinking water distribution systems). The planning area is tied to the area impacted by the construction of the proposed project. The environmentally affected area and the planning area are not the same since the area environmentally affected by the project is not defined by jurisdictional or political boundaries, or by the same geographical boundaries as the planning area.

23. "Planning document" is a document which describes the condition of a public drinking water system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of IDAPA 58.01.22 and in the handbook.

24. "Proposal" exists at that stage in the development of an action when an applicant has a goal, and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed so that the final statement is completed in time for inclusion in any recommendation or report on the proposal. A proposal may exist in fact as well as by stated declaration that one exists.

25. "Responsible official" means the Department of Environmental Quality (DEQ) employee who is authorized to fulfill the requirements of these procedures.

26. "Screening-level environmental analysis" consists of assembling general information about potential environmental impacts for the purpose of alternatives comparison.

27. "Significantly" as used in this section requires considerations of context, intensity, and mitigation:

    a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects at the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.

    b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if DEQ believes that on balance the effect will be beneficial. Therefore adverse impacts must not be considered as "offset" by beneficial impacts.

(2) The degree to which the proposed action affects public health or safety, and acknowledging the highly beneficial nature of public drinking water projects when assessing the potential transient impacts of such projects

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, important farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or may represent a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. However, the temporary nature of a transient impact should be an important consideration when assessing significance, depending on the particular impact (e.g. fugitive dust).

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

c) Mitigation. Actions are not significant if they are addressed under existing consultations, rules, regulations, permits, and procedures which mitigate and reduce adverse effects below the level of significance.

32. "State" means the State of Idaho.

D. LEGAL FOUNDATION

1. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS. Under Section 39-105(4), Idaho Code, DEQ has the required level of authority to perform 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, but not limited to, the safe drinking water act, 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 DWSRF 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.

The Board of the Department of Environmental Quality, through the Director, is the state authority responsible for administration of grants and loans for drinking water projects funded with state and federal money (Idaho Code Title 39 Chapter 76). The Board is authorized to adopt rules necessary for the effective administration of the grant and loan program. Because 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.

2. LEAD AGENCY. The Department of Environmental Quality will have primacy in conducting reviews. We will be conducting multidisciplinary reviews with other state and federal agencies.

E. THE ENVIRONMENTAL REVIEW AND THE PLANNING DOCUMENT

DEQ shall review the planning document associated with a DWSRF loan application or state planning grant project. Screening level environmental information shall be a part of any planning document submitted to DEQ. After an initial review of the screening level information provided and the Checklist for a Categorical Exclusion Request, the Regional DEQ office shall advise the applicant if an environmental information document (EID) is required. If required, it should be included as a section or chapter of the planning document, or may be submitted as an appendix. Using references in the EID is acceptable on the condition that the EID is either a section of the planning document or is included as an appendix. The Environmental Assessment may also be made during the preliminary design.

F. RESPONSIBILITIES AND COMPLIANCE

1. The loan applicant will have the following responsibilities during the environmental review process.
   a) Gathering Environmental Information. The loan recipient will be responsible for gathering and incorporating screening-level environmental information regarding the project into 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 (CatEx) or if an environmental information document (EID) is required.
   b) Agency Consultation. The loan recipient may be responsible for some consultations with federal, state, and/or local agencies regarding the proposed project.
   c) Preparation of Environmental Information Documents (EID). This will be the responsibility of the loan recipient, and will include – as appropriate – consultation with agencies having jurisdiction over environmental conditions and federal cross-cutter regulations in order to assess potential impacts. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects.

d) Public Meetings. All activities pertinent to the public meeting including meeting notices, mailings, and Limited English Proficiency compliance will be handled and documented by the loan recipient.
e) Mitigation Measures. The loan recipient will incorporate into its project any mitigation measures embodied in a Finding of No Significant Impact (FONSI), a CatEx, or the loan agreement.

2. The Environmental Review responsibilities of the DEQ include:
   a) During early consultation, assess the possible environmental impacts of the project and discuss with the loan recipient the type of environmental documentation that may be required.
   b) Review and advise on the adequacy of environmental review documentation submitted by the loan recipient.
   c) Determine proposed impacts to specific resources through agency consultation.
   d) Document all environmental determinations and issue public notices.
   e) Review for compliance with rules and Chapter 5 of the handbook, and ensure that the environmental review responsibilities of the loan recipient are carried out.
   f) Adopt the environmental documentation of a state or federal agency, if appropriate, in developing DEQ's environmental determination.
   g) If an environmental determination is more than 5 years old, re-evaluate the proposed action, environmental conditions, and public views and reaffirm the previous determination or require the loan recipient to update the environmental information.

3. COMPLIANCE FOLLOW-UP. Loan conditions will require compliance with mitigation measures.

4. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies "equivalent to" those in the Federal Administrative Procedures Act (APA), Section 39-107(6) of the Environmental Protection and Health Act, in conjunction with 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), 67-5201 et seq. with 5 USC 554 and 702.

G. OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

The facility planning document is used to identify and assess the reasonable alternatives to a proposed action so that adverse environmental effects can be avoided or minimized. The goal of an environmental review is to establish the appropriate level of mitigative actions. The environmental review process by which this is determined includes the following steps:

1. *Consultation with DEQ (Scoping Meeting)*. The applicant is directed to consult with DEQ early in the facilities planning effort (during preparation of the facility plan and before submission to the regional office for technical approval) to determine the appropriate level and scope of environmental review for the proposed project.

2. *Is a project eligible for a categorical exclusion?* DEQ will determine if a project is eligible for a categorical exclusion, based on the completed Checklist for a Categorical Exclusion (Form 5-D) including specified supplemental documentation. DEQ may determine that issuing a categorical exclusion is appropriate without completion of any substantial part of either the engineering report, categorical exclusion support documentation, or an EID. This is called an undocumented categorical exclusion. When categorical exclusion support documentation is needed to verify that a categorical exclusion is the appropriate environmental determination, a loan recipient may retain recognized professional subject area expertise to assist in documenting the significance (i.e., existence and/or severity, or mitigation) of a potential impact. On occasion it may be necessary to confirm this finding with a potentially affected agency.
3. *Determining when an EID is needed.* If the project is determined to be ineligible for a categorical exclusion, the applicant shall prepare an EID for the project, which may be included in the planning document as a separate chapter or appendix.
4. *Contact potentially affected agencies*. DEQ will determine if there is the potential for significant impact, and if there is that potential DEQ will inform the loan recipient of the potentially affected agencies. As part of the preparation of an EID, the loan recipient must contact all potentially affected agencies. Note that if a regulatory process will generate review independent of the SERP, the SERP will not engage in that consultation.
    - Agencies are given a 30-day period to respond to a formal request for consultation. A nonresponse after 30 days will be treated as a "no comment" response. Documentation of the contact shall be maintained in the SRF project file. Initial agency response received after 30 days will not be considered.
    - The loan recipient must address all comments and concerns received from such agencies in its EID. A list of agencies is provided in Part I of this procedure.
5. *Assessing environmental impacts*. DEQ will review the draft EID and may require changes to it before final approval. Upon completion of the EID, DEQ will either:
    - Determine the project is eligible for a FONSI, prepare the draft determination, satisfy publication requirements, address relevant comments, and prepare the final determination, or
    - Determine the project will result in significant impacts and assess project feasibility.
6. *Issuance of documents.* DEQ will post to its website and publish Findings of No Significant Impact in the newspaper(s) of record.

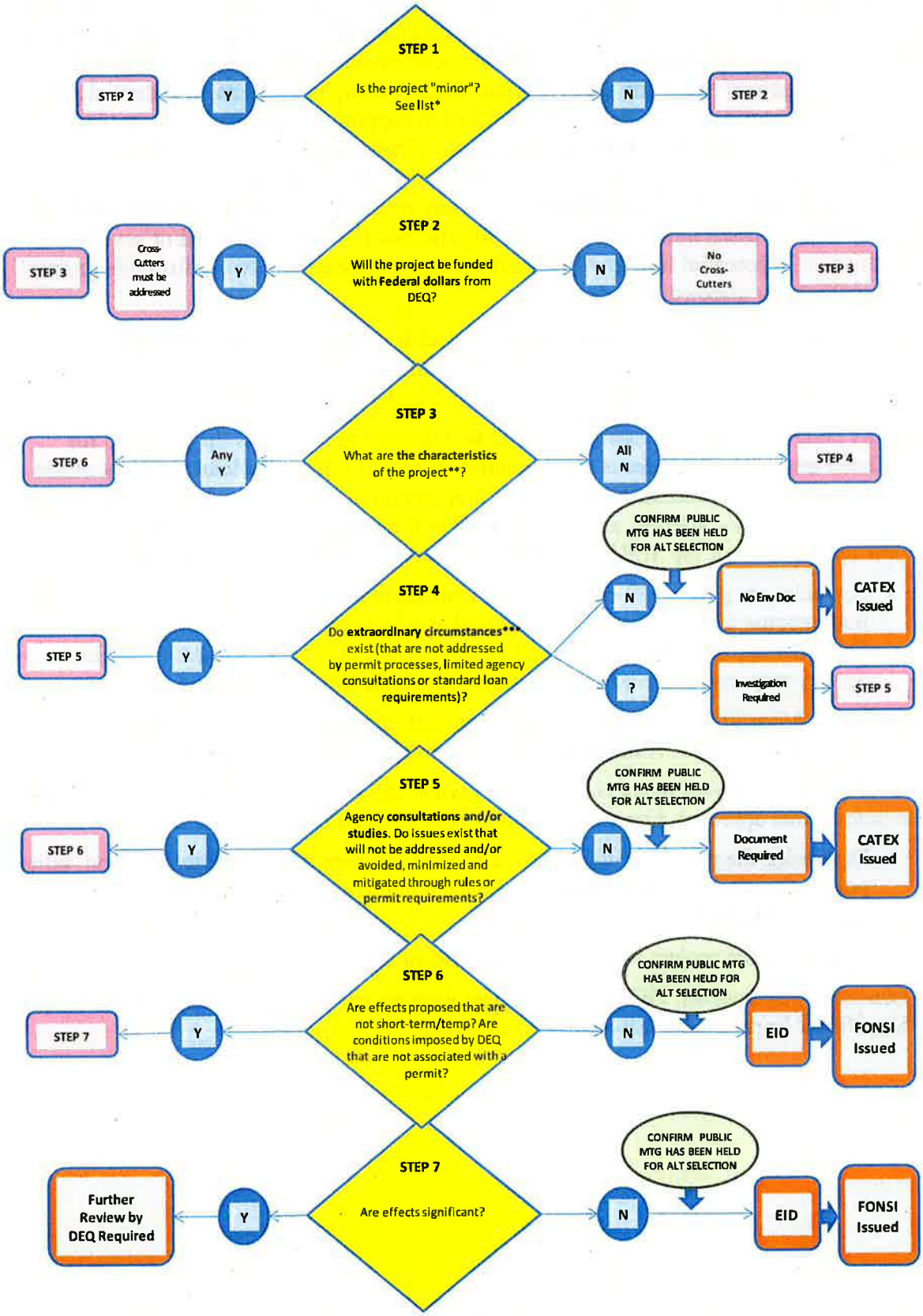

Figure 1. Categorical Exclusion Decision Tree

*** Actions that are considered "minor"** (from *Form 5-B/C* ***CWSRF and DWSRF*** *Env Review Procedures; NOTE: This listing is not comprehensive*):
- Existing infrastructure system projects - minor upgrading, minor expansion of system capacity or rehabilitation or construction of new minor ancillary facilities adjacent to or on the same property.
---- *Examples: functional replacement of systems, system components such as the distribution and collection networks, treatment works, storage facilities, pumps, lift stations.*
- Unsewered communities - project involving replacement of existing onsite systems.
- Actions for which consultation is not required because independent regulatory mechanisms inherently reduce impacts to below the level of significance.
---- *Examples: permits such as those required by Federal, state and local agencies for well installation, stream alteration, floodplain development, and waters of the U.S.*
- Installation of point of use units with a discharge of residuals to wastewater system.
- Installation of new wells.

**** Project Characteristics**
- Will the project provide capacity to serve a population projected to grow at a rate > 25% of the 20-yr population growth rate for the state AND is it expected to change the current population by > 500 estimated residential units?
- Is the project known or expected to have a significant effect on the quality of the human environment including a substantial increase in the volume or the mass of pollutant to the receiving water?
- Is there a likelihood of significant public controversy?

***** Extraordinary Circumstances (Bold = questions asked regardless of funding source)**
- **Is the proposed action known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time?**
- **Is the proposed action known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities?**
- Is the proposed action known or expected to significantly affect federally listed threatened or endangered species or and significant fish or wildlife habitat?
- Is the proposed action known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, or cultural value, including but not limited to, property listed on the National Register of Historic Places?
- Is the proposed action known or expected to significantly affect the environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers?
- Is the proposed project known or expected to cause significant adverse air quality effects?
- Is the proposed action known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans?
- **Is the proposed action known or expected to cause significant public controversy about a potential environmental impact of the proposed action?**

Figure 1a. Decision Tree footnotes

7. *Finalizing the grant or awarding the loan.* With issuance of the final environmental determination, a planning document can be given final approval if technical considerations have been met. Once the planning document has received final approval, the grant can be closed out, or a design and construction loan can be awarded (if, in all other respects, the loan application is complete).
8. *Monitoring.* The construction activities and post-construction operation and maintenance of the facilities are monitored by DEQ to ensure implementation of mitigation measures. In addition, the planning effort may be completed as part of the loan.

H. AN IN-DEPTH LOOK AT THE STEPS IN THE ENVIRONMENTAL REVIEW PROCESS

1. Project Scoping Meeting. The applicant shall initiate the environmental review process early in the planning document development process with DEQ to identify important environmental issues, to avoid delays, and to resolve conflicts. Thus, the environmental review process should be an integral part of the facilities planning process.

   An important benefit of early consultation with DEQ is the determination that a categorical exclusion is appropriate without additional substantive environmental review or supporting documentation.

   - In cases where a categorical exclusion with no supporting documentation is determined to be appropriate early in the planning process, the planning document

need only include the minimum environmental information called for in the engineering report outline (see Form 5-A).

- In cases where a categorical exclusion is determined to be the most likely decision, but supporting documentation is needed to verify that stance, the planning document needs to include appropriate documentation as specified by DEQ.
- In cases when a categorical exclusion is not appropriate, the applicant shall begin scoping the content of an EID early in the planning document development process. This EID will, in final form, be suitable for issuance of a FONSI.

2. Categorical Exclusion (CatEx). Prior to the initial scoping meeting, DEQ shall forward the Checklist for a Categorical Exclusion Request (Form 5-D) to all applicants to complete and bring to the scoping meeting. From the completed checklist and documentation submitted, DEQ shall then determine if the applicant is eligible for a CatEx. If there is any question as to the significance of a potential adverse effect, the applicant is encouraged to provide additional documentation such as an opinion rendered by a recognized subject area expert. If the project qualifies for a CatEx, DEQ will prepare the CatEx documents (Form 5-E) for the signature of the Responsible Official.

a) *Categories of actions eligible for exclusion.* For these procedures, actions consistent with the following categories (items 1, 2, 3, or 4) are eligible for a categorical exclusion:

(1) Actions relating to existing infrastructure systems (such as sewer systems and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities

(2) Actions in unsewered communities involving the replacement of existing onsite systems, provided the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge

(3) Actions for which consultation is not required because independent regulatory mechanisms will inherently reduce impacts to below the level of significance (unless the regulatory actions are deemed insufficient by DEQ).

(4) Actions in #3 (below) that consultation shows do not require mitigation.

b) *Criteria for not granting a categorical exclusion.* Any of the actions listed below where consultations show will require mitigation, or that are not addressed through an independent regulatory mechanism:

(1) New or relocated discharges to surface or ground water;

(2) Known or expected to have a 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, including a substantial increase in the volume or the mass of pollutant to the receiving water;

(3) Known or expected to directly or indirectly affect (1) cultural resource sites; (2) endangered or threatened species or their habitats; (3) flood plains, wetlands, important farmlands, aquifer recharge zones; or,

(4) Known or expected to cause significant public controversy.

(5) The facilities would provide capacity to serve a population projected to:

a. grow at a rate 25% in excess of the 20-year population growth expectations for the state as a whole (according to the Idaho Division of Financial Management projections); and

b. exceed the current system's population by greater than 500 estimated residential units (ERUs).

(6) The action is not supported by the state or other regional growth plan or strategy

(7) The action directly or indirectly involves or relates to upgrading or extending infrastructure primarily for the purposes of future development. If any of the above conditions exist, the responsible official shall ensure that an EID and FONSI are prepared and issued.

c) *Developing new categories of excluded actions.* The responsible official or other interested parties may request that a new category of excluded action be created or that an existing category be amended or deleted. The request shall be made in writing to the director of DEQ and shall contain adequate supporting information. Proposed new categories shall be evaluated by DEQ. The following shall be considered in evaluating proposals for new categories:

(1) Actions in the proposed category should seldom result in the effects outlined below.

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EID or EIS; and

(3) Information adequate in determining if a potential action is consistent with the proposed category will normally be available when needed.

d) *Extraordinary circumstances*. The responsible official will review actions eligible for categorical exclusions to ensure that no extraordinary circumstances are involved. Extraordinary circumstances include the following circumstances when they are not addressed by existing rules, regulations, permits, or other mechanisms which mitigate adverse effects. Note: DEQ action is only required for projects funded with federal dollars and water quality concerns congruent with DEQ's mission.

(1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

(2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally recognized Indian tribal communities.

(3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)

(4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places. (Note: DEQ action only required for projects funded with federal dollars.)

(5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)

(6) The proposed action is known or expected to cause significant adverse air quality effects. (Note: DEQ action only required for projects funded with federal dollars.)

(7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally recognized Indian tribe approved land use plans or federal land management plans.

(8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

e) *Proceeding with the project after the environmental determination has been issued*:

(1) After a categorical exclusion on a proposed project has been granted and a notice has been published in the local newspaper, the planning document can be given final approval, if technical considerations have already been satisfied. With approval of the planning document, the DEQ grant can be closed out, or DWSRF loan arrangements may proceed without being subject to any further environmental review requirements, unless the responsible official determines that the project or the conditions at the time the categorical determination was made have materially changed.

(2) For categorical exclusion determinations 5 or more years old, the responsible official shall reevaluate the project, environmental conditions, and public views and, prior to a loan agreement, either:

a. Reaffirm—Issue a public notice reaffirming DEQ's decision to proceed with the project without need for any further environmental review in the event that nothing of a material nature has changed; or

b. Supplement—Update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised public notice in the event that something of a material nature has changed; or

c. Reassess—Revoke the categorical exclusion and require a more complete environmental review.

3. Preparing an Environmental Information Document. If the responsible official determines that issuing a categorical exclusion is not appropriate, then the applicant shall prepare an EID. The EID shall concisely address all environmental impacts, including each of the following subjects and requirements so that DEQ personnel may assist the applicant in objectively identifying potentially significant environmental concerns and their potential impacts (see Form 5-E). To avoid repetition, the EID may reference other sections of the facility plan for the specified information.

   If agency consultation responses are not received within 30 days of making the request, the nonresponse will be treated as a "no-comment" response. Documentation of the contact shall be maintained in the SRF project file. Agency response received after 30 days will not be considered.
   Note: if at any time during the preparation of the EID and agency consultations it becomes clear that the preferred alternative proposes significant impacts on a resource (see Extraordinary Circumstances) that cannot be avoided, minimized, or mitigated, a second project scoping meeting is necessary. Alternatives must be reconsidered for feasibility at this time, as DEQ will likely not fund a project that proposes significant impact to the environment.

   - Cover sheet. This should properly identify a project, with the applicant's name, mailing address, email address, and telephone number, and provide the same information for the project contact and the environmental contact if different from the applicant. The cover sheet should also provide basic cost and funding information and an abstract.
   - Purpose and need. This should include a brief summary discussion.
   - Description of the existing environment. For the facility planning area, the environmental conditions shall be concisely described.
   - Analysis of alternatives. This discussion shall include a brief comparison analysis of feasible alternatives, including the no-action alternative. Each alternative must be briefly evaluated based on beneficial and adverse consequences to the existing environment. Near-term or long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate. However, such mitigation will only be considered for impacts that will not be controlled via a regulatory process that is independent of the SERP (e.g., 404 permits).

- Evaluating environmental consequences of proposed action. The relevant impacts of the proposed action, including measures to mitigate adverse impacts shall be identified.
- Minimizing adverse effects of the proposed action.

(1) Measures taken to mitigate or eliminate adverse effects shall be identified during the environmental review.

(2) DEQ shall accept a planning document and approve loan assistance for its implementation if the applicant has made or agreed to make changes in the project in accordance with environmental determinations made in a FONSI for an EID.

4. Decisions Resulting from the Environmental Information Document Review. The responsible official will make one of two possible decisions after evaluating known and suspected environmental impacts presented in an EID. The review and analysis of the EID will determine whether a proposed project either qualifies for a FONSI determination or may not be a feasible project. To determine if a FONSI is the appropriate environmental determination, the responsible official should have the planning document, EID for the project, the commitments for mitigation, and any other documentation deemed necessary. The responsible official will verify that any mitigation measures for impacts have been documented. Additionally, the responsible official will ensure the commitments for mitigation clearly identify: that the mitigation measures identified for implementation are enforceable, the party(s) committing to mitigation measures has the authority and ability to fulfill the commitments, and appropriate monitoring will be conducted during implementation of the mitigation measures.

a) Issuing a Finding of No Significant Impact (FONSI) Determination for an EID

(1) Criteria for distributing a draft FONSI. If, after assessment of environmental impacts and completion of the environmental review, the responsible official determines that a FONSI is appropriate, a draft FONSI may be issued and distributed to the mailing list included in the EID or published in the newspaper of greatest distribution for the project planning area. The draft FONSI determination will be based on an independent review by DEQ of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of this document. The FONSI shall include any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(2) Publication of the draft FONSI. A 30-day public review and comment period follows publication of the draft FONSI determination. The legal notice of the draft FONSI includes the location where interested parties can review the draft FONSI, the complete planning document and EID, and provides the information for where comments are to be sent.

(3) Issuance of the final FONSI. After closure of the public comment period, the responsible official shall respond to all substantive comments received, incorporate any necessary revisions into the FONSI, and issue the final FONSI determination.

(4) Proceeding with a grant closure or the loan agreement. Once the final FONSI determination is issued for the project and the planning document is approved, the DEQ grant may be closed out or a loan agreement may be made without preparation of an additional FONSI unless the responsible official later determines that the project or environmental conditions have changed significantly from those that underwent environmental review.

(5) FONSIs 5 or more years old. For a FONSI 5 or more years old, the responsible official shall reevaluate the project, environmental conditions, and public views, and, prior to approval of a loan agreement, either:

a. Reaffirm—Issue a public notice reaffirming DEQ's decision to proceed with the project without revising the EID in the event nothing of a material nature has changed, or

b. Supplement—Require an update of the EID and issue and distribute a revised FONSI in the event something of a material nature has changed, or

c. Reassess—Withdraw the FONSI and reconsider the feasibility of the project.

I. POTENTIALLY AFFECTED AGENCIES

The appropriate state and federal agency contacts can be found at: www.deq.idaho.gov/water-quality/grants-loans/environmental-review.aspx.

J. MONITORING FOR COMPLIANCE

DEQ shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FONSI.

K. ALTERNATIVE STATE ENVIRONMENTAL REVIEW PROCESS

DEQ has authority to conduct environmental reviews of projects that are solely funded with state monies. Therefore DEQ will implement an alternative SERP approach in which adherence to cross-cutting considerations is not required. The implementation of an alternative process will reduce the administrative burden associated with CWSRF and DWSRF loans without substantive loss of environmental protections.

The following summarizes the five criteria that the Alternative SERP meets:

1. The process is supported by a legal foundation which establishes state authority to review projects and activities receiving assistance.
2. The process ensures that the environmental objectives of the state are met (as listed below).
   a) DEQ Objective #1: Implement surface and ground water quality protection using a watershed approach.
   b) DEQ Objective #2: Reduce the pollutants in surface water to meet water quality standards and beneficial uses.

c) DEQ Objective #3: Protect and improve ground water quality.

d) DEQ Objective #4: Assist/support public water systems in the delivery of safe/reliable drinking water.

e) DEQ Objective #5: Encourage reuse.

f) DEQ Objective #6: Prevent and control pollution from wastewater discharges.

3. The process requires comparative evaluation of alternatives and an accounting of beneficial and adverse consequences to the existing and future environment.
4. The process requires adequate documentation of the information, processes, and premises that influence the environmental determination.
5. The process requires public notice of proposed projects to provide opportunity to comment on alternatives and to examine environmental review documents.

I. PUBLIC PARTICIPATION

Public participation steps must be accomplished before completion of the environmental review process. Consistent with public participation requirements in state rules, it is DEQ policy to ensure that certain public participation steps be achieved before DEQ completes the environmental review process. Public participation duties for the applicant and DEQ during the environmental review process are outlined below.

1. *Applicant Duties.*

a) Required activities. As a minimum, the applicant must conduct the three steps described below.

(1) Public Information. The applicant provides information to interested and affected parties well in advance of decisions being made. Information may be distributed to the public by newspapers, flyers, newsletters, brochures, posting in local public areas, or whatever combination of means is needed to effectively inform the public about the proposed project and the alternatives under consideration.

(2) Public Notice. The applicant publishes a legal notice to solicit comments and public involvement. The public comment period shall run for no less than 14 days. **The governing authority should not make a decision until after the close of the public comment period to allow consideration of public input.**

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.

NOTE: The public meeting notice and the public comment period may or may not run concurrently.

(3) Public Meeting. The applicant will hold one public meeting after all

alternatives have been developed, but before a preferred alternative has been selected, to discuss all of the alternatives, the customer costs based on anticipated funding sources, related environmental impacts and mitigation measures specific to each alternative, and the reasons for possible rejection of certain alternatives. The meeting should be well documented with minutes, an agenda, and a list of attendees.

NOTE: One public meeting can satisfy the public participation requirements for both the environmental review and the planning document if properly coordinated.

b) Voluntary Activities. In addition to the minimum public participation requirements, the applicant may choose to hold additional public meetings to informally solicit public input during the initial environmental planning. Informal gatherings (e.g., open houses or advisory groups) can be more conducive to a free exchange of questions and answers than more formal proceedings.

2. *DEQ Duties.* DEQ has public participation responsibilities during the initial environmental planning stage of a project and also at the completion of the environmental review process that include the following three steps:

a) Outreach Efforts. DEQ supports the applicant's outreach efforts during project planning and is responsible for providing information about the technical and environmental aspects of the project to the public as needed. This support may include, participating and/or speaking about the project at informal informational meetings or at public hearings, etc.

b) Environmental Determination Public Comment Period. DEQ issues an environmental determination and publishes a legal notice (commensurate with the level of environmental determination issued) to inform the public of the agency's environmental decision. For a Categorical Exclusion, this serves as the conclusion of the environmental review process. When an EID is prepared, the Draft FONSI determination is issued along with a public notice to invite public comment. Upon completion of the public comment period for the Draft FONSI determination, DEQ addresses relevant comments before issuing the Final FONSI determination.

c) When More Public Participation is Required. Once the minimum 14-day public participation requirement has been satisfied for the alternatives analysis or the 30-day public comment period for DEQ environmental determination, DEQ may require additional public participation procedures as deemed necessary on a project specific basis.

Form 5-C
SERP Scoping Meeting

Project Name | Date of Meeting

Meeting Attendees

Grant # | FP Folder TRIM | FP TRIM

FP approved for public comment? ○ Yes ○ No

Recapitalization dollars used? ○ Yes ○ No Notes:

Engineering Project Manager

EID Preparer, if separate

Applicant Contact
(who will public contact to view documents?)

Project overview/description and cost:

What funding sources are being considered? ☐ SRF ☐ USDA ☐ CDBG

☐ USACE ☐ IDWR ☐ Other Please describe:

Today's discussion applies only to DEQ environmental review requirements; other funding agencies may have different requirements.

Do federal cross-cutting authorities apply? ○ Yes ○ No Notes:

Is the project eligible for a categorical exclusion? Why or why not?

Categories:

☐ Existing footprint or adjacent to it

☐ *All* project impacts that could trigger a consultation are addressed through construction-related permitting or other regulatory action

DWSRF Program:

☐ Drinking water POU system

☐ New or replacement well

CWSRF Program:

☐ Onsite WW system replacement

Narrative:

Extraordinary Circumstances

Significant extraordinary circumstances (ineligible for CatEx if any "Y," N/A if crosscutter):

Excessive population growth	○ Yes	○ No	○ ?	
Potential significant impacts to human environment	○ Yes	○ No	○ ?	
Land use or population distribution	○ Yes	○ No	○ ?	
Public controversy	○ Yes	○ No	○ ?	
Disproportionately high adverse effects on any community, e.g., minority/tribal, low-income	○ Yes	○ No	○ ?	○ N/A
T/E spp. or significant fish and wildlife habitat	○ Yes	○ No	○ ?	○ N/A
Cultural Resources	○ Yes	○ No	○ ?	○ N/A
Wetlands, floodplains, significant agricultural lands or Wild and Scenic Rivers	○ Yes	○ No	○ ?	○ N/A
Significant adverse air quality effects	○ Yes	○ No	○ ?	○ N/A

DEQ Objectives

Does the project (add narrative below each item):

☐ Implement surface and ground water quality protection using a watershed approach?

☐ Reduce the pollutants in surface water to meet water quality standards and beneficial uses?

☐ Protect and improve ground water quality?

☐ Assist/support public water systems in the delivery of safe/reliable drinking water?

☐ Encourage reuse?

☐ Prevent and control

Screening Level Environmental Analysis--Review and discuss (where necessary) using categories below

Potential effects of recommended alternative (*cross-cutters)

Item	In FP? If Y, list FP sec.	Issues	Notes/Add'l Info Req'd	Consult Req'd?
C.5(a) Physical aspects				
C.5(b) Population				
C.5(c) Economics and social profile				
C.5(d) Floodplain Development (100-yr)*			msc.fema.gov/portal/	
C.5(e) Wetlands*			www.fws.gov/wetlands/	
C.5(f) Wild & Scenic Rivers*			www.rivers.gov/mapping-gis.php	
C.5(g) Cultural Resources*				
C.5(h) Flora & Fauna				
T&E Species/Critical Habitat*			www.ecos.fws.gov/ipac	
Essential Fish Habitat*			www.deq.idaho.gov/media/1118596/salmon-essential-fish-habitat-map.pdf	
Other Wildlife				
C.5(i) Prime Farmlands*			websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx	
C.5(j) Air Quality*			www.deq.idaho.gov/attainment-nonattainment	
C.5(k) Surface water quality and quantity			www.deq.idaho.gov/water-quality/surface-water/tmdls/table-of-sbas-tmdls/	
C.5(l) Ground water (CWSRF projects)				
C.5(m) Safe Drinking Water Act (sole source aquifer)*				
Adding potential new source of contamination to SSA or source area (consult if Y)?			www.deq.idaho.gov/water-quality/ground-water/sole-source-aquifers.aspx	
C.5(n) Reuse/land application or subsurface disposal system				
C.5 (o) Nonpoint water quality problems (DWSRF projects)				

Determine agencies to consult for DEQ

Consultation contacts by region are at www.deq.idaho.gov/water-quality/grants-loans/environmental-assessment.aspx.

Review limited English proficiency (LEP) data Census Table S1602 from factfinder.census.gov

Discuss public participation requirements (applies to FONSI or CatEx)

1. Limited English Proficiency (LEP) population in the project area? See item C.5(c) above. If so, discuss options for outreach specific to the needs of this population.
2. **Publish notice** of public mtg, typically in newspaper of record, reasonably in advance. Include mtg date/time/location; explain how public can review documents and provide comment; when decision will be made and by whom; provide Affidavit of Publication in appendix
3. **Public comment period** must be minimum of 14 days from publication date to decision, longer if local ordinances require it or project is expected to be controversial; provide written comments and resolution in appendix
4. **Public meeting** (does not have to be a hearing) with presentation of alternatives, including environmental screening analysis; send sign-in sheets (ask for *mailing* addresses, not physical addresses) to DEQ separately (not as part of EID or FP), so we can send postcards
5. Council/Board resolution *explicitly* ***select an alternative***; provide minutes in appendix

Discuss advantages to phasing project

Establish preliminary timelines/schedule

Typical problems with EIDs prepared to support FONSI

1. EID discussion of issues determined above not to be significant can be limited to "brief presentation of why they will not have a significant effect …" 40 CFR 1501.7(a)(3).
2. Council/Board resolution approves facility plan but *does not explicitly select an alternative*
3. Purpose & Need should emphasize public health, regulatory compliance and environmental issues caused by existing facility
4. EID Abstract should *briefly* describe recommended alternative, potential environmental effects and significant mitigation measures; no more than 1 page

Notes and Action Items

1.
2.
3.

4. DEQ route copy of this filled-out form to attendees

Conclusion

Attachments

Primary DEQ Environmental Review contact for this project

☐ Aimee Hill, aimee.hill@deq.idaho.gov, (208) 373-0556

☐ Mike Stambulis, michael.stambulis@deq.idaho.gov, (208) 373-0123

☐ MaryAnna Peavey, maryanna.peavey@deq.idaho.gov, (208) 373-0122

Note: Participation in the scoping meeting provides the documentation necessary to conclude the facility has requested a Categorical Exclusion (CatEx/CE) in accordance with IDAPA 58.01.04, 58.01.12, 58.01.22, and 58.01.20.

Form 5-D
Checklist for a Categorical Exclusion Request

This form is to be used for DEQ review of proposed projects where a categorical exclusion is deemed appropriate early in the process.

Applicant/Borrower and DEQ Grant or Loan Number	
Environmental Reviewer	
Date	

Categories: Is the project "minor"?

- ☐ Existing footprint or adjacent to it
- ☐ Drinking water POU system (DWSRF Program)
- ☐ New or replacement well (DWSRF Program)
- ☐ Onsite WW system replacement (CWSRF Program)
- ☐ All project components that could trigger a consultation are addressed through construction-related permitting or other regulatory action

Project Scope	

DEQ Objectives

Does the project (add narrative below each item):

- ☐ Implement surface and ground water quality protection using a watershed approach?

  Comments:

- ☐ Reduce the pollutants in surface water to meet water quality standards and beneficial uses?

  Comments:

- ☐ Protect and improve ground water quality?

  Comments:

- ☐ Assist/support public water systems in the delivery of safe/reliable drinking water?

  Comments:

- ☐ Encourage reuse?

  Comments:

☐ Prevent and control pollution from wastewater dischargers?

Comments:

Project Characteristics

All projects are *initially* considered for a CE. Project outcomes that may trigger a FONSI, other than mitigative effects that are not addressed via an independent regulatory authority, include:

1. Will provide capacity to serve a population 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 expected to change the current system's population by greater than 500 estimated residential units. ○ Y ○ N
2. Directly or indirectly involves or relates to upgrading or extending infrastructure systems primarily for the purposes of future growth. ○ Y ○ N
3. Is the project known or expected to have a significant effect on the quality of the human environment including a substantial increase in the volume or the mass of pollutant to the receiving water? ○ Y ○ N
4. Is there a likelihood of significant public controversy? ○ Y ○ N

Extraordinary Circumstances

Proposed actions which involve or include any of the following extraordinary circumstances require further consideration before determining if they are eligible to be categorically excluded. Note that circumstances are not considered "extraordinary" or "significant" if they refer to actions that are addressed under existing rules, regulations, permits, processes and/or consultations which lead to mitigation of potential adverse effects (e.g., IPDES, 404 permits, etc.). In addition, "significant" should be assessed in terms of context and intensity.

1. Is the proposed action known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time? ○ Y ○ N

   Notes:

2. Is the proposed action known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally recognized Indian tribal communities? ○ Y ○ N

   Notes:

3. Is the proposed action known or expected to significantly affect federally listed threatened or endangered species or their critical habitat? ○ Y ○ N

   Notes:

4. Is the proposed action known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, or cultural value, including but not limited to, property listed on the National Register of Historic Places? ○ Y ○ N

Notes:

5. Is the proposed action known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat? ○ Y ○ N

Notes:

6. Is the proposed project known or expected to cause significant adverse air quality effects? ○ Y ○ N

Notes:

7. Is the proposed action known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally recognized Indian tribe approved land use plans or federal land management plans? ○ Y ○ N

Notes:

8. Is the proposed action known or expected to cause significant public controversy about a potential environmental impact of the proposed action? ○ Y ○ N

Notes:

9. Is the proposed action known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts? ○ Y ○ N

Notes:

10. Is the proposed action known or expected to conflict with federal, state, or local government, or federally recognized Indian tribe environmental, resource-protection, or land-use laws or regulations? ○ Y ○ N

Notes:

If you were able to answer "no" to ALL of the above extraordinary circumstances questions, the proposed action qualifies for CE.

Public Participation Efforts Required

1) Limited English proficiency (LEP) population in the project area? If so, discuss options for outreach specific to the needs of this population.
2) **Publish notice** of public meeting, typically in newspaper of record, reasonably in advance. Include meeting date/time/location. Explain how public can review documents and provide comment, when decision will be made and by whom, and provide affidavit of publication.
3) **Public comment period** must be minimum of 14 calendar days from publication date to explicit selection of alternative, longer if local ordinances require it or project is expected to be controversial; provide written comments and resolution.
4) **Public meeting** with presentation of alternatives, including environmental screening analysis; provide sign-in sheets.
5) Council/board resolution must *explicitly* ***select an alternative*** and document.
6) Note: the public is also notified when the DEQ determination of categorical exclusion is made. No public comment period is associated with the final CatEx determination.

Form 5-E
Outline and Checklist for
Environmental Information Documents (EIDs)

Applicant/Borrower and DEQ Grant or Loan Number	
Environmental Reviewer	
Date	

Y = yes N = no NA = not applicable

In the event the Responsible Official determines the project should be categorically excluded from further environmental review, an EID is not required.

For instances where the EID is incorporated into the Facility Plan as a separate chapter there is no need to repeat information in the environmental chapter which has already been presented in a previous section of the Plan. The environmental chapter can simply reference the relevant information.

GENERAL

Scope and Content

- The SERP exists to ensure the protection of human health and the environment.
- The EID shall be a concise document briefly providing sufficient evidence and analysis to identify impacts and mitigation measures.
- An EID shall not contain overly long descriptions, or detailed data which may have been gathered. Rather, it should contain a brief discussion of the purpose and need for the proposal, alternatives to the proposal, briefly describe the environmental impacts of and mitigation measures for the proposed action and alternatives, and a list of agencies and persons consulted.
- The Summary of Alternatives section shall only contain sufficient detail for the reader to understand the potential environmental impacts and mitigation measures of the alternatives which evaluated during the planning phase. Equipment details or preliminary design discussions/evaluations shall not be presented or required unless they have a bearing on the environmental impacts or mitigation measures.
- Preparers of EIDs shall not be required to identify the final permits which the project will require. A preliminary list is the best that can be expected until well into the design phase. The Preliminary Engineering Report will clarify which permits are essential.

Editing for Style

- Document reviews shall focus on meaningful, essential comments strictly related to social, technical, and scientific content.

- If the information in a document submitted by a grant recipient is understandable, then it generally shall be accepted as is. Documents shall not be returned to grant recipients to provide greater definition or to add detail (e.g. different color or thickness for map delineations). It is not the intention of the SERP process to produce documentation of a superior appearance.

Streamlining

- The EID can be incorporated as a chapter or appendix of the Facility Plan or as a separate document (the latter is more appropriate for complicated EIDs).
- If an EID under separate cover is produced as a companion document to the Facility Plan, information which is already in the Facility Plan should not be duplicated in the EID. In lieu of duplicating this information, the appropriate section of the Facility Plan shall simply be referenced in the EID.
- Appendices do not need to include copies of published books or papers; in those cases, a reference will suffice.
- EID discussion of issues determined not to be significant can be limited to a brief presentation of why they will not have a significant effect.

Design Information

- Reviewers shall recognize that detailed design information will not be available at the planning stage of the project, which is when SERP review occurs. DEQ expects that the information provided will be estimates. If a project design differs considerably from the planning estimates with a potential for changes in environmental impacts or mitigation, DEQ will reevaluate the SERP decision.

Agency Consultations

- DEQ expects to receive a response to a consultation request within 30 days of receipt. Consulting agencies shall be contacted a week prior to the end of a 30-day comment period and reminded of the upcoming expiration of the period. Follow-up should be conducted by the entity that initiated the consultation. No response shall be assumed to mean "no comment." Documentation of the contact shall be retained in the SERP project file.
- Agency consultations may not be required if the issue of concern (e.g. stream crossing) is addressed by a stand-alone regulatory effort (e.g. 404 permit).
- Agency consultations shall only be engaged in if the scoping meeting (informed by DEQ Regional Office knowledge of the project site) uncovers the potential for significant impact.
- Agency consultations for cross-cutting authorities are only required if the project is funded with federal dollars. The SRF Loan Manager shall be consulted to determine the likely source of funding.
- Once the reviewer has agreed to a list of agency consultations, this list shall not be changed without providing concrete, definitive reasons for changes.
- In the event that an expert assessment such as a biological assessment or an archeological survey is submitted to DEQ, then DEQ will promptly forward the assessment to the consulting agency for review. DEQ develops an agency

determination on the project effects to cultural resources, essential fish habitat and threatened and endangered species.

Public Comment Periods

- The public must be afforded an opportunity to comment on the planning effort. A minimum 14 (calendar) day comment period is required in conjunction with public notice and a public meeting.
- Public comment received during the public meeting should be documented in the EID.
- The public review/comment period on a draft FONSI determination shall be 30 days, or 45 days for controversial projects. This allows the public time to review the EID, the facility plan, and other supporting documentation for the draft FONSI.

A. PURPOSE AND NEED FOR THE PROPOSED PROJECT

1. Does the document provide a discussion of the need for the proposed project relative to public health, water quality problems, and other concerns, with particular emphasis on the severity and extent of the concern(s)? Describe sources of information used to assess the need. ○ Y ○ N
2. Does the document describe conformity, or lack thereof, with any existing regulatory requirements? ○ Y ○ N ○ NA

B. PROJECT DESCRIPTION

1. Does the document provide a general description of the selected alternative? ○ Y ○ N
2. If the selected alternative is not the most cost-effective one, does the document provide a justification for the option chosen? ○ Y ○ N
3. Does the document describe the environmental impacts of the chosen alternative? ○ Y ○ N
4. Does the document describe the permit requirements of the chosen alternative? ○ Y ○ N

C. AFFECTED ENVIRONMENT

The purpose of this section is to verify that the selected alternative is environmentally sound and verify that any adverse environmental impacts are avoided, minimized, or mitigated. To validate the selection of the preferred alternative, it is important at this point to identify the major human-made and natural features of the environment that the proposed project will affect.

1. Is a description and map of the proposed project planning area included in the facility planning document? Do the description and map take into account the following criteria? ○ Y ○ N

   a) A description of the proposed project planning area (PPPA) boundaries ○ Y ○ N

   b) Key topographic and geographic features of the area ○ Y ○ N

   c) The population distribution ○ Y ○ N

   d) Industrial and commercial features of the planning area ○ Y ○ N

2. Has the estimated area of potential effects (APE), if different from the proposed project planning area, been identified? ○ Y ○ N
   a) Once the APE has been identified, have the effects related to the proposed project been characterized? ○ Y ○ N
   b) Has the estimated APE been included on the map(s)? ○ Y ○ N
3. Describe the following major features of the proposed project and include them on the maps.
   a) The estimated length and diameter of distribution lines, collector and interceptor sewer lines and force mains
   b) The preliminary number and estimated size, depth, and location of pumping stations, wells, springs, and storage tanks
   c) The estimated location and description of treatment facilities
   d) The estimated location and description of each type of on-site septic system, community system, or large soil absorption system that will be used
   e) Any other facets of the planned construction (such as location of outfall for a surface water discharge, location of reuse site, or rapid infiltration basin).
4. Are all wastewater flows adequately described (i.e. source and 20-year minimum flow for treatment works, and 40-year minimum flow for collection systems)? ○ Y ○ N
5. This section provides a checklist to ensure that the applicant has identified all environmental features that the proposed project may affect. NOTE: Sufficient detail should be provided either in the facility plan or the EID on each of the following topical sections.
   a) Physical aspects (topography, geology, and soils)
      (1) Are the physical aspects of the areas, potentially affected by the proposed project, described in sufficient detail to allow for a determination of site suitability and potential impacts? ○ Y ○ N
      (2) Discussion

b) Population

(1) Are the growth rates excessive because of:

(a) exceeding by 25% the 20-year population growth rate expectations for the state (Idaho Division of Financial Management), and ○ Y ○ N

(b) having a change of greater than 500 estimated residential units over the life of the project? ○ Y ○ N

(2) Discussion

c) Economics and social profile

(1) Environmental justice (Executive Order No. 12898): *(Note: projects funded with federal dollars)*

a) Will any low-income or minority groups be adversely affected in any way by the proposed project? ○ Y ○ N

b) Are any benefits from this project going to accrue in a discriminatory manner? ○ Y ○ N

(2) Discussion

d) Floodplain development (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Will any part of the planned project be located within or affect a 100-year floodplain? (Attach maps used to arrive at decision with PPPA, APE, and major project features showing.) ○ Y ○ N

(2) If some part of the planned facility will be located within a 100-year floodplain, and no practicable alternative to this exists, has the community indicated that measures will be included in the design of the facilities to minimize or avoid adverse effects to the floodplain? ○ Y ○ N ○ NA

(3) Will the facility be able to fully function and operate during a 100-year flood event? ○ Y ○ N

(4) If the proposed project will impact a 100-year floodplain, has the applicant indicated how the public will be notified of this and how public input will be considered? ○ Y ○ N ○ NA

(5) If the project or some part of it will be in a 100-year floodplain, is the borrower currently located within a jurisdiction that is participating in the National Flood Insurance Program? ○ Y ○ N ○ NA

(6) Discussion

e) Wetlands (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Is any portion of the project planning area located within wetlands as defined and mapped by the U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), Natural Resources Conservation Service (NRCS), or a qualified private consultant? ○ Y ○ N

(2) If part of the proposed project will be located in or will affect wetlands, as determined by maps and/or site investigations, will a 404 dredge and fill permit be required from the USACE? (Attach maps, site investigations, or correspondence used to reach decision.) ○ Y ○ N ○ NA

(3) Have alternatives to keeping the project outside the identified wetlands been proposed in the EID or engineering report/facility plan? ○ Y ○ N ○ NA

(4) If part of the proposed project will be located in an identified wetland, and no practicable alternative exists, has a wetlands assessment of measures to minimize or mitigate adverse effects been made? ○ Y ○ N ○ NA

(5) If a Wetland Delineation Report has been prepared for the proposed project site, did the USACE concur with DEQ findings on the Wetland Delineation Report? ○ Y ○ N ○ NA

(6) Discussion

f) Wild and scenic rivers (*Note: projects funded with federal dollars*)

(1) Does the planning area contain a designated or proposed wild and scenic river? ○ Y ○ N

(2) If so, is the proposed project compatible with any existing wild and scenic river management plan? ○ Y ○ N ○ NA

g) Cultural resources (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Has the State of Idaho historic preservation officer or THPO requested a site survey to determine the presence or absence of cultural resources in the proposed project area? ○ Y ○ N

(2) If cultural resources have been identified in the project area, will the project have direct or indirect adverse impacts on any listed or eligible property? ○ Y ○ N ○ NA

(3) Has the loan applicant developed mitigation measures to avoid or reduce adverse impacts to cultural resources identified in the proposed project area? ○ Y ○ N ○ NA

h) Flora and fauna

DEQ shall complete the initial consultation(s) with the USFWS on threatened/endangered species, with the National Marine Fisheries Service (NMFS) regarding Essential Fish Habitat, and with the Idaho Fish and Game on other species where appropriate. DEQ will complete a determination memo and return the results of the consultation to the EID preparer for inclusion in the EID.

Threatened/Endangered Species/Critical Habitat (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Are there any designated threatened or endangered species or critical habitat in the proposed project planning area? DEQ shall complete the initial consultation with the USFWS on threatened/ endangered species AND NMFS on threatened/endangered ocean-going fish AND Salmon Essential Fish Habitat. ○ Y ○ N

(2) If listed species or habitats are present, has a biological assessment been prepared by a qualified expert for designated threatened or endangered species? ○ Y ○ N ○ NA

(3) Will the project have direct or indirect adverse impacts on any such designated species or habitats? ○ Y ○ N ○ NA

(4) If a Biological Assessment (BA) has been prepared for threatened or endangered species, did the U.S. Fish and Wildlife Service concur with DEQ's findings on the BA? ○ Y ○ N ○ NA

Essential Fish Habitat (EFH) (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Is there any Salmon EFH in the proposed project planning area? ○ Y ○ N

(2) Will the project have direct or indirect adverse impacts on EFH? ○ Y ○ N ○ NA

(3) Has the NMFS provided a list of conservation recommendations if the project is adversely affecting Salmon EFH? Identify the measures proposed to avoid, minimize, or offset the impact of proposed activities on Salmon EFH. ○ Y ○ N ○ NA

Other Wildlife (*Note: only applies to projects funded with federal dollars*)

(1) Will the project have direct or indirect adverse impacts on other fish and wildlife, or their habitats, including migratory routes, wintering, or calving areas? ○ Y ○ N

(2) Does the planning area include a sensitive habitat area designated by a local, state, or federal wildlife agency? ○ Y ○ N

Discussion

i) Prime farmlands (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Does the planning area contain any important farmlands/forests (prime, unique, statewide importance, local importance, etc.) as determined by the U.S. Department of Agriculture (USDA)? Include completed form AD-1006. ○ Y ○ N

(2) Has an assessment been performed by USDA Natural Resources Conservation Service (NRCS) as initiated by submittal of Form AD-1006? ○ Y ○ N ○ NA

(3) If yes, will the project directly or indirectly encourage the irreversible conversion of environmentally significant agricultural lands to uses that result in the loss of these lands as an environmental or essential food production resource? ○ Y ○ N ○ NA

(4) Discussion

j) Air quality (*Note: The consultation requirement only applies to projects funded with federal dollars*)

(1) Will the facilities cause odor or noise nuisance problems? ○ Y ○ N

k) Surface water quality and quantity

(1) Are water quality and quantity adequately described in the planning document? ○ Y ○ N

(2) Will the project adversely affect water rights? ○ Y ○ N

(3) Does the project adversely affect a water source area for a public drinking water system? ○ Y ○ N

(4) Will the project have a beneficial impact on surface water quality? ○ Y ○ N

(5) Discussion

l) Ground water (see Groundwater Checklist found at www.deq.idaho.gov/water-quality/grants-loans/environmental-review.aspx)

(1) Indicate the information that was used to characterize existing ground water:

- Test pits ○ Y ○ N
- Monitoring wells ○ Y ○ N
- Piezometers ○ Y ○ N
- Other (describe) ○ Y ○ N

(2) Has information been provided on the following?

- Subsurface soil conditions ○ Y ○ N
- Ground water quality ○ Y ○ N
- Depth to water ○ Y ○ N
- Ground water flow direction ○ Y ○ N
- Surface water features adjacent to the property ○ Y ○ N
- All wells and well logs within ¼ mile ○ Y ○ N

(3) Does the project have the potential to adversely affect ground water? ○ Y ○ N

If you answered yes to either 1 or 2, what are the mitigation activities to prevent ground water impacts.

m) Safe Drinking Water Act (*Note: the consultation requirement only applies to projects funded with federal dollars*)

(1) Does the project have the potential to adversely affect a sole source aquifer or its stream flow source area or recharge area? ○ Y ○ N

(2) Does the project have the potential to adversely affect a source water area for a public drinking water system? ○ Y ○ N

If you answered yes to either 1 or 2, what are the mitigation activities to prevent source water impacts.

n) Reuse/land application or subsurface disposal system

1) Has sufficient information been provided to enable a determination of possible impacts due to the use of: new or unproved techniques, rapid infiltration basins, low-rate land application, or subsurface sewage disposal? ○ Y ○ N

D. MAPS, CHARTS, AND TABLES

1. Do the maps, charts, and other graphic materials used in the facility plan and referenced in the EID help the reader clearly discern project features as estimated at the planning level? ○ Y ○ N
2. Are all graphs, charts, tables, and other graphics referenced in the EID labeled and referenced? ○ Y ○ N

E. ENVIRONMENTAL IMPACTS OF PROPOSED PROJECT

1. Are the beneficial as well as adverse impacts of the project upon human-made and natural features clearly identified, and is mitigation provided for adverse impacts? ○ Y ○ N
2. Are additional potential or existing beneficial as well as adverse impacts that are worthy of discussion in the EID noted? ○ Y ○ N ○ NA
3. Are there obvious areas of beneficial as well as adverse impact that have not been considered in this evaluation? List them below. ○ Y ○ N ○ NA

4. Have unavoidable adverse impacts that cannot be fully mitigated been listed and discussed? ○ Y ○ N ○ NA
5. Are all the positive beneficial impacts due to the proposed project highlighted? ○ Y ○ N ○ NA

F. POTENTIALLY AFFECTED AGENCIES

40 CFR, Part 6, identifies the scope of federal environmental concerns and objectives that must be addressed in the environmental review process for projects funded with federal dollars. Note that if a regulatory process will generate a review process independent of the SERP, that the SERP will not engage in that consultation. Agency consultation will only be entered into if the local authorities (including DEQ regional office) conclude that a significant impact is likely.

Agencies are given a 30-day period to respond to a formal request for consultation. A non-response after 30 days will be treated as a "no comment" response. Documentation of the contact shall be maintained in the SRF project file.

Contact information for the following state and federal agencies can be found at: www.deq.idaho.gov/water-quality/grants-loans/environmental-review.aspx

1. Landmarks, Historical, Cultural and Archeological Sites
   a) State Historic Preservation Officer
   b) Tribal Historic Preservation Officer (THPO) for:
      (i) The Coeur d'Alene Tribe
      (ii) Nez Perce Tribe
      (iii) Confederated Salish and Kootenai Tribes
2. Threatened and Endangered Species and Essential Fish Habitat
   a) U.S. Fish and Wildlife
   b) NOAA National Marine Fisheries Service
3. Fish and Wildlife Protection and Enhancement
   a) Idaho Fish and Game Department
4. Wild and Scenic Rivers
   a) Bureau of Land Management
   b) U.S. Forest Service
5. Flood Plains

a) Idaho Department of Water Resources
b) City or county (if enrolled in a National Flood Insurance Program)

6. Farmland Protection
   a) U.S. Department of Agriculture
7. Wetlands
   a) U.S. Army Corps of Engineers
8. Ground Water Protection
   a) DEQ Water Quality Division and Regional Project Engineer
9. Air Quality (*Note: only applies to projects funded with federal dollars*)
   a) DEQ Air Quality Division

G. MEANS TO MITIGATE ADVERSE ENVIRONMENTAL IMPACTS

1. Have mitigation measures been listed for potential impacts? ○ Y ○ N ○ NA
2. Provide the list of measures.

H. PUBLIC PARTICIPATION

1. If the environmental review process has determined that something other than a categorical exclusion is appropriate, has the public been given at least 14 days to review and comment on the alternatives under consideration for the proposed project and environmental impacts of each alternative? This is to ensure that environmental information is available before decisions are made and actions are taken. The comment period begins with the date the public notice is published. The notice need not be published more than once, unless the project is highly controversial. If the project is deemed controversial, then the public notice will be tailored to suit the circumstance. The applicant should retain a copy of the public notice in the applicant's project files. ○ Y ○ N
2. Have dates and meeting locations for all public hearings and meetings concerning the planning document and EID been described in the EID? Include copies of the meeting minutes of when an alternative was selected. ○ Y ○ N
3. Have all substantive issues raised by the public in meetings, hearings, and by correspondence been described in the EID? Include copies of public comments received. ○ Y ○ N ○ NA
4. Have substantive public concerns been addressed in the planning document and final environmental document? ○ Y ○ N ○ NA
5. Have significant substantive comments received from state and federal agencies been described and considered in the planning document and final environmental document? Include copies of state and federal agency comments received. ○ Y ○ N ○ NA

I. REFERENCES AND AGENCIES CONSULTED

Is there a list of all reference documents and agencies consulted in preparation of the EID? ○ Y ○ N

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 Filer (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 Borrower is a public entity created for the purposes, among other purposes, of operating and maintaining the public drinking water system located in Filer, Idaho and taking all necessary actions to ensure that the public drinking water system meets all applicable laws. The Department hereby offers a loan to the Borrower according to the terms and conditions contained in this document and the Rules.

Specimen

SECTION II. DESCRIPTION OF PROJECT

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

A.	Loan Project Number:	DW 1703
B.	Name and Address of Borrower:	City of Filer PO Box 140 Filer, Idaho 83328
C.	Project Description:	This loan is to construct a new treatment facility, as well as new distribution components including valves, pumps, storage tanks, well houses, piping and telemetry.
D.	Terms:	$3,299,660 at 1.75% (interest of .75% and loan fee of 1.00%) and $1,410,225 of principal forgiveness to be repaid in biannual installments over 30 years for a total repayment obligation of $1,889,435.

E. Estimated Project Budget:

1.	Administration	$100,000
2.	Treatment	$5,031,216
3.	Engineering	$1,033,828
	Total	$6,165,044

Amount to be financed by DEQ	**$1,889,375**
Amount to be granted by DEQ	**$1,410,225**
Amount to be financed by RD*	**$1,900,000**
Amount granted by RD	**$400,000**
Amount to be financed by CDBG	**$500,000**
Amount financed by Applicant	**$65,444**

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.

Specimen

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. The Borrower has provided the Department with documentation evidencing ownership of, and/or the right of access or easements for real property on which the project is proposed to be constructed. Clear title or legal right to access all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project, prior to commencement of construction. Land acquisitions shall only be reimbursed by DEQ if obtained from a willing seller.

F. 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.

G. 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.

Specimen

H. That Borrower shall levy assessments and take those actions necessary to collect unpaid charges for services or assessments, including without limitation, seeking money judgments and filing and foreclosing on liens. Borrower agrees that, in the event Borrower fails to meet its obligations under this Agreement and the subsequent Bond to repay the Department, that the Department is entitled to seek specific performance of this Agreement to force the Borrower to take those actions necessary to collect unpaid charges for services or assessments in order to repay the Department. Nothing in this paragraph limits any other remedy available to the Department in the event the Borrower violates this Agreement or the terms of the Bond.

I. 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.

J. 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.

K. That this Agreement is binding upon the Borrower and the Department, and any person,

office or entity succeeding the Borrower or the Department.

L. To comply with all applicable federal, state and local laws.

M. 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.

N. Comply with all federal requirements applicable to the Agreement (including those imposed by the 2014 Appropriations Act (Public Law 113-76, Section 436) and related SRF Policy Guidelines) which includes requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Borrower has requested and obtained a waiver from Department pertaining to the Project or (ii) Department has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Safe Drinking Water Act (Section 1452, Title XIV of the Public Health Service Act), including any reports required by a Federal agency or Department such as information on costs and project progress.

The Borrower understands that (i) each contract and subcontract related to the project is subject to audit by appropriate federal and/or state entities and (ii) failure to comply with the Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the loan in advance of the maturity of the Bonds and/or other remedial actions.

Specimen

O. As per Executive Order 12549, 2 CFR 180 and 2 CFR 1532 the loan recipient agrees to not enter into covered transactions with any contractors or subcontractors that have been suspended or debarred, and to include a similar term or condition in all lower tier covered contracts and transactions.

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 at least 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 assessments on property owners or otherwise, for the purposes of establishing a fund dedicated solely to (1) 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.

Document

G. Develop and adopt a cross connection control plan.

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 licensed 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 Chapter 6, Form C, of the DWSRF Loan Handbook, located at http:http://www.deq.idaho.gov/media/60179689/6-a-dw-0117.pdf.

SECTION V. SPECIAL CONDITIONS

Specimen

A. The Borrower shall complete the attached project schedule and submit to the Department for approval on or June 30, 2017. 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 Twin Falls Regional Office, prior to becoming effective.

C. Manage direct and indirect environmental impacts from the project that are specified in the environmental determination.

D. As per section VII.G. of this offer the following deliverables must be produced:

1. Establish a capital replacement fund

2. Establish a full-cost pricing supported by a capital budget

E. A technical memorandum shall be developed and submitted during the detailed design phase for each Green Project Reserve (GPR) component identified in the Letter of Interest. The memorandum shall fully detail the GPR justification according to the current EPA guidance for determining project eligibility and comparable to the examples provided on the Department's website. Please review the following URLs for guidance

(*current as of* 04/27/2017):

1. http://kia.ky.gov/NR/rdonlyres/08C6B5D5-BD95-4DC7-A579-9CAA7AEAA7AB/0/EPA_GPR_Guidance_May2011.pdf

2. http://water.epa.gov/grants_funding/dwsrf/upload/dwsrf_gpr_business_case_examples_508_compliant.pdf

3. http://www.deq.idaho.gov/water-quality/grants-loans/green-project-reserve.aspx

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

A. This loan will be evidenced and secured by a bond in the amount of $1,889,375 (one million eight hundred eighty thousand nine three hundred and seventy five dollars). The bond 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.

Specimen

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 Special Conditions in Section V 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.

Specimen

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

A. This loan shall be repaid in the manner set forth in the bond which shall be attached to this Agreement and incorporated by reference. The payment terms of the bond shall be consistent with this Agreement.

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

Specimen

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. If the loan is terminated prior to final disbursement, the Borrower shall immediately pay back to the Department all disbursed funds and accrued interest.

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.

Specimen

SECTION XI. OFFER

The offer set forth herein must be accepted, if at all, on or before June 30, 2017. 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 May___, 2017.

_____

John H. Tippets
Director
Department of Environmental Quality

SECTION XII. ACCEPTANCE

The City of Filer, 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.

Specimen

_____

Signature of Representative

_____

Name and Title of Representative - type or print

_____

Date

ATTACHMENT 5

DISBURSEMENT PROCESS

