



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
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ATLANTA, GEORGIA 30303-8960

AUG 02 2013

Jessica C. Godreau, Chief
Public Water Supply Section
North Carolina Department of Environment
and Natural Resources
1634 Mail Services Center
Raleigh, North Carolina 27699-1634

Dear Ms. Godreau:

Thank you for your transmitting the proposed revised Operating Agreement (OA) for the North Carolina Department of Environment and Natural Resources' Drinking Water State Revolving Fund program. The proposed revisions to the OA have been reviewed, comply with program requirements and are approved. The revisions are minor and in accordance with section II.A. of the existing OA, I am serving as the signatory agent for the Environmental Protection Agency.

Enclosed is a signed copy of the OA for your files. If you have any questions, please contact me at 404-562-9243 or Stephanie Frankovich of my staff at 404-562-9754.

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas McGill".

Thomas McGill
Chief
Grants & Infrastructure Branch

Enclosure

18 July 2013

**North Carolina Department of Environment and Natural Resources
Division of Water Resources
Public Water Supply Section
Drinking Water State Revolving Loan Fund**

Operating Agreement with
U. S. Environmental Protection Agency
Region IV

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I. INTRODUCTION

A. PURPOSE:

The State Revolving Loan Fund Capitalization Grant Agreement (CGA) establishes a contractual relationship between the U.S. Environmental Protection Agency, hereafter referred to as EPA, and the State of North Carolina. The Safe Drinking Water Act (SDWA) of 1996, hereafter known as the “Act” and the Drinking Water State Revolving Funds; Interim Final Rule of August 7, 2000, hereafter known as the “Rule”, specify certain elements which are required to be in the CGA. Other portions of the Act relating to program administration and certain assurances are also logically included in the CGA. Certain cross cutting laws and executive orders have been determined to apply to the Drinking Water State Revolving Loan Fund (DWSRF) program.

The purpose of this Operating Agreement (OA) is three-fold:

- 1) to outline the basic agreement between EPA and the State of North Carolina,
- 2) to provide a framework for the annual CGA, Intended Use Plan (IUP), and
- 3) to set in place the administrative and technical conduct of the program by the State, and program review and oversight by EPA.

B. SCOPE:

The scope of the OA includes all policies, procedures, and activities by and between the State of North Carolina and the EPA under the DWSRF program, established pursuant to Title XIV of the Act. These policies, procedures and regulations are identified in this OA as those allowable for the conduct of the Drinking Water State Revolving Loan Fund (DWSRF), between the Regional EPA and the Public Water Supply Section (PWS Section) in the Division of Water Resources of the North Carolina Department of Environment and Natural Resources (NCDENR). The policies that are specifically applicable to the DWSRF are found in Chapter 159G, North Carolina Water Infrastructure Act as amended August 24, 2005, hereafter known as “159G,” and available at: http://www.ncleg.net/enactedlegislation/statutes/pdf/bychapter/chapter_159g.pdf

This OA will continue from year-to-year as the basic agreement and will be supplemented annually by the required grant application, Intended Use Plan, and such other attachments, exhibits or detailed information as EPA or the State determines is necessary.

The IUP is required by Section 1452 (3)(b)(2) of the SDWA. The scope of the IUP includes the specific items required by the Act and the Rule, and any other such information as the Regional Administrator or the State may from time-to-time deem appropriate.

C. FORMAT AND STRUCTURE:

To the extent possible, detailed information concerning State laws, rules and procedures of either NCDENR or the PWS Section will be incorporated. Upon initial submission and review of the OA, all such appendices, attachments and exhibits must be included either in fact or by reference. During the annual grant application review, any changes to this Agreement will also be considered. Only the materials relevant to the proposed changes will need to be submitted.

Information that changes from year-to-year is contained in the annual IUP. Such detailed information will be presented in outline or tabular format. The structure of such lists and tables will be designed for ease of reporting annual achievements in the required Annual Report using the same formats.

D. COMPLETE APPLICATION:

A complete grant application is made up of the following four parts:

- 1) A properly executed Application for Federal Assistance, (EPA Form SF-424) with supporting documentation meeting 40 CFR Part 31 requirements, including the required certifications, assurances and agreements,
- 2) Any proposed modification to the Operating Agreement,
- 3) The Annual Intended Use Plan, showing the proposed use of project and non-project funds, and
- 4) The State's Attorney General Certification.

An application for a capitalization grant will not be considered complete until each section and any necessary attachments or exhibits have been received in the Regional Office. The State shall ensure that the entire grant application package is submitted concurrently.

E. TIMING:

A complete application shall be submitted to the Regional Administrator at least 90 days prior to target grant award date. A full 90 days will be allotted for EPA/State negotiation of the SRF grant. By mutual agreement, this arrangement may be extended by 90 days.

II. OPERATING AGREEMENT

A. INTRODUCTION AND GENERAL PROGRAM MANAGEMENT ASSURANCES:

This Operating Agreement section of the EPA/DWSRF Capitalization Grant Agreement describes how the State will fulfill the requirements of Section 1452 of the Act and other program requirements. The frame work and procedures described in the OA are not expected to change annually. The OA simply describes the structure of the state's program, explains its goals and objectives, and includes review, overview, accounting, auditing and sanction provisions.

In addition to the specific requirements under Title XIV of the Act, the State agrees to continue to support and work cooperatively with EPA on a wide range of general administrative and program efforts. Such efforts may include but are not limited to, special data and information request by EPA Headquarters, responses to Congressional inquiries, national needs survey, etc.

The State agrees to provide financial and project information for use by the Drinking Water National Information Management System (DWNIMS) developed by EPA and used by the Regional Office to assist in the conduct of annual reviews of the DWSRF program.

The State has established internal management and program controls to protect against waste, fraud and abuse of public funds and will establish project level controls to ensure both technical and fiscal integrity of the program. Section 1452(g)(3)(c) of the Act requires accounting and audit procedures to ensure fiscal integrity. The State agrees to maintain technical review and inspection procedures to ensure technical integrity of projects.

The State agrees to provide for public comment and review of the annual IUP. The State shall encourage and provide the opportunity for public review and comment through the requirements of Section 1452(3)(b) of the SDWA for the State's project priority list.

In addition to the specific requirements and assurances required by Title XIV, this Operating Agreement sets forth program and management policies and procedures identified as the DWSRF Standard Operating Procedures to be implemented by the State that are intended to assure EPA that an effective DWSRF program will be achieved.

It is the Region's policy to 1) award capitalization grants to meet the intent of Title XIV, 2) to provide the State with considerable flexibility in administering the DWSRF program as is permissible under the Act and subsequent regulations and guidance, 3) to oversee the State's DWSRF program only to the degree necessary to assure compliance with the Act and the Rule and the terms and

conditions of this OA and the CGA, and, 4) to minimize Regional involvement at the project level. The signatory agent for the State is the Secretary of the North Carolina Department of Environment and Natural Resources, and the signatory agent for EPA is the Regional Administrator, Region IV. Minor changes to this OA may be negotiated and approved by the DWSRF Program Manager for the State and the SRF & Surface Water Grants Section Chief for EPA Region IV. This OA may be amended at any time by mutual consent of the signatories.

The State agrees to provide all staffing, hiring, training, etc., required to adequately staff and otherwise administer the DWSRF program. Funding for these activities is available in amounts up to 4 percent of the capitalization grant awards; however, necessary funding in excess of this amount must be provided by the State.

The State has established and agrees to maintain such files and other program and project records as may be required to:

- 1) document compliance with the Act, other federal regulations, the terms and conditions of this OA and any general and special conditions of the Capitalization Grant,
- 2) produce the required annual report,
- 3) document the technical and financial review and decisions on projects,
- 4) support audits, and
- 5) provide effective and efficient program management.

The State will follow operating procedures meeting 40 CFR 31 requirements related to the Capitalization Grant, file retention, storage and disposal. Public access to project records will be according to the State Freedom of Information Act or other similar statute. Access to Capitalization Grant records will be according to the Federal Freedom of Information Act.

B. SRF - AN INSTRUMENTALITY OF THE STATE:

Title XIV requires that prior to receiving a capitalization grant a State must establish a drinking water revolving fund that complies with the requirements of the Act. Section 1452 further requires that the Fund be administered by an instrumentality of the State that has such powers and limitations as may be necessary to administer the program.

On June 9, 1997, legislation was passed authorizing the North Carolina Department of Environment and Natural Resources to administer a DWSRF Fund. The State certifies that this legislation grants powers and authorities necessary to implement and administer the State revolving fund programs consistent with Title VI of the Clean Water Act and Title XIV of the Safe Drinking Water Act of 1996, EPA regulations and guidance.

1) State Law

The State law may be amended from time to time. Any NCDENR proposed legislative changes to the State Law directly affecting the DWSRF will be presented to the Region IV EPA in draft form for consideration and review. Any such changes to the State law will be submitted to Region IV of EPA for review as a modification to this Agreement. If the State law is deficient, but not seriously deficient, EPA will negotiate with the State administrative procedures that can be applied until the State law can be amended. NCDENR will pursue amendments to the State law in the next session of the State Legislature to amend and correct any deficiencies.

2) Interagency Agreements

Where State laws authorize more than one State agency to be involved in the DWSRF, specific authorities and divisions of responsibilities must be established and formalized in a memorandum of understanding, a copy of which will be provided to EPA. This situation does not currently apply in North Carolina.

In the event such a need arises, NCDENR will be the contact point with EPA and local governments seeking assistance. NCDENR will also communicate any necessary information from EPA to the PWS Section. The PWS Section will provide the technical review of proposed projects and rank all projects according to selection criteria. NCDENR will administer the Fund and provide "banking services" and a financial capability review of each project for inclusion in project ranking. The PWS Section will provide direct managerial oversight for the use of funds in the non-project account. Other agency duties and responsibilities will be outlined in a Memorandum of Understanding.

C. CAPITALIZATION GRANTS:

EPA agrees to review the capitalization grant application and take appropriate action within 90 days of receipt of a complete application in the Regional Office. EPA will either approve the application and award the Capitalization Grant or will notify the State in writing of disapproval and the reasons for such disapproval. The State and EPA agree to negotiate promptly, cooperatively and in good faith to clarify or resolve questions that may arise during review of the grant application. The State agrees to act upon the Capitalization Grant offer within 21 days after receipt.

D. PAYMENT SCHEDULE:

The State agrees to accept grant payments in accordance with the payment schedule to be established annually in the Capitalization Grant Application and to

deposit all such payments in the DWSRF established by the State. The proposed payment schedule will be presented in the IUP as a summary table.

The proposed payment schedule shall cover the entire amount of funds expected to be awarded under the current year's DWSRF grant. The payment schedule will extend for up to eight quarters after the Capitalization Grant award or up to twelve quarters after the allotment to the State, whichever is earlier. Subsequent year's IUP/CGA may modify the payment schedule, however, the maximum eight quarters/twelve quarters time frames may not be exceeded for each grant.

It is important that the payment schedule account for all funds appropriated under Title XIV. The State agrees that it will accept federal grant payments in accordance with the negotiated payment schedule for eligible activities of the Fund and other programs consistent with Section 1452.

Payments from EPA to the State will be made in the form of increases to the EPA Automated Clearing House Payment System.

E. STATE MATCHING FUNDS:

According to Section 1452(e), the State certifies that it will deposit in the Fund from State monies an amount equal to at least 20 percent of the amount of each quarterly payment on or before the date on which each quarterly payment is made according to the agreed schedule.

State funds may be deposited into the Fund in a single deposit at any time on or before deposit of the first quarterly payment under each annual grant agreement or may be deposited simultaneously with the receipt of each quarterly payment.

Such State matching funds are cumulative and may be deposited in advance but not in arrears. If the State provides matching funds in excess of the amount required, the excess amount may be credited toward subsequent match requirements.

F. COMMITMENT OF 120% IN ONE YEAR:

The State agrees to enter into cumulative binding commitments to provide assistance in accordance with the requirements of Title XIV of the Act an amount equal to 120 percent of the amount of cumulative grant payments within one year after receipt of such grant payment and to commit non-project funds in a timely and expeditious manner.

A schedule of actual commitment dates of DWSRF funds will be stated in the annual report.

G. ALL FUNDS - TIMELY EXPENDITURE:

The State agrees to expend all monies in the Fund in an expeditious and timely manner. The State agrees to develop a project schedule for each project to be assisted from the DWSRF and to include in that schedule critical milestones including at a minimum:

- 1) the date of binding commitment;
- 2) the date of start of construction;
- 3) the estimated dates of completion;
- 4) the commencement of operations; and
- 5) such other milestones as may be required by Agency Guidance.

In general, EPA and the State agree that expenditure of DWSRF funds for construction or other eligible project costs should begin within six months after entering into the binding commitment or on such time frame as may be required by loan agreements. The State's loan agreement with each recipient shall establish conditions under which, if expenditure of funds has not begun, the loan will be withdrawn. When a recipient fails to meet the conditions for repayment, the State shall initiate default actions in accordance with established State policies.

H. ENFORCEABLE REQUIREMENTS OF THE ACT:

The State agrees that all monies in the Fund as a result of capitalization grants will be used to assist public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements, to protect public health, and to assist systems most in need on a per household basis. In accordance with the North Carolina General Statutes, the State further agrees that funds from the capitalization grant will be used to enforce all rules and regulations for and applicable to North Carolina's primary drinking water regulations; records and reports.

I. CROSS CUTTING ISSUES:

The State agrees that no assistance agreement for a public water supply facility will be entered into until the recipient has certified with an EPA Form 4700-4 that the project meets the requirements of Title VI of the Civil Rights Act. The State will review plans for the proposed service area to ensure that minority populations are not being discriminated against and that the recipient's certification accurately reflects the conditions and accurately assesses the provision of facilities to minority populations.

The State agrees to negotiate with EPA a fair share proportion of the capitalization grant that is targeted for Women and Minority Enterprises (MBE/WBE).

The State has developed procedures to ensure that recipients and prime contractors follow the six affirmative action steps in attempting to identify and utilize MBE/WBE firms. See the following website for more information:
http://www.ncwater.org/pws/srf/Pages/DBE_Page.htm

The State will also establish procedures to ensure that only certified MBE/WBE firms are approved for this program. The State will establish working relationships with Minority Business Development Centers for assistance in identifying and screening MBE/WBE firms.

EPA will provide training and advice or assistance on MBE/WBE at the request of the States and within the limits of available resources.

The State agrees to comply with the federal laws and authorities listed in the Rule. The State shall require the recipient to comply with the applicable federal laws and authorities. Based on factual information regarding noncompliance with any of these federal laws and authorities, the State shall submit a formal referral to the appropriate federal agency. The State shall cooperate and coordinate with the federal agencies with respect to their enforcement actions. EPA shall provide any additional technical assistance to the State and shall provide any necessary enforcement assistance in such matters. These laws relate to the Environmental, Economic and Miscellaneous and Social Policy Authorities that govern federally assistance projects.

J. STATE LAW AND PROCEDURES:

The State agrees that in addition to complying with the requirements of the Act, the State will commit or expend each quarterly grant payment in accordance with laws and procedures applicable to the commitment or expenditure of revenues of the State.

Procurement actions by the recipients are subject to procurement requirements of the State or any more stringent requirements of the local recipient. These must conform to applicable Federal law and standards in the EPA procurement regulations of 40 CFR Part 31.

K. STATE ACCOUNTING AND AUDITING PROCEDURES:

The State agrees to use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards in connection with the financial management of the Fund.

The State accounting and auditing procedures conform to the standards established in "Governmental Accounting and Financial Reporting Standards," Governmental Accounting Standards Board Statement 1, July 1984, and "Government Auditing Standards," GAO dated July 1988.

The audit reports required by the Act and any other financial data required by Section 1452 will be provided in such format as may be required by EPA. The state further agrees to comply with the requirements of the "Single Audit Act" and any such "Audit" deemed appropriate by EPA to meet this provision.

L. RECIPIENT ACCOUNTING AND AUDIT PROCEDURES:

The State agrees to require as a condition of making a loan or providing other assistance from the Fund, as described in Section 1452 of the Act, that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards and will conduct an annual audit of the facility's financial records. This provision is a requirement in the loan agreement.

M. ANNUAL REPORT:

The State agrees to make annual reports to the Regional Administrator on the actual use of funds and how the State has met the goals and objectives for the previous fiscal year as identified in the IUP for the previous year. As required by Section 1452(g)(4), this report shall identify loan recipients, loan amounts and loan terms and similar details on other forms of financial assistance provided from the Fund and other such information as the Regional Administrator may require. The Annual Report will describe the extent to which the existing DWSRF will provide for the long term fiscal health of the Fund, attain and maintain compliance with the Act, and carry out other provisions specified in the legislation, and the Rule.

The State agrees to submit the annual report to the Regional Administrator according to the schedule established in the CGA.

N. LIMITATIONS ON ELIGIBILITY:

The State agrees that monies in the State drinking water revolving fund account shall be used only for the purpose set forth in Section 1452(f) of the Act and limits the use of funds from the DWSRF in accordance with 1452(a)(3).

Specifically, the State agrees that no assistance will be provided to a public water system that either (1) does not have the technical, managerial, and financial capability to ensure compliance with requirement of the Act, or (2) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance. The exceptions to these provisions are (1) the public water system agrees to undertake feasible and appropriate changes in operations if the State determines that the measures are necessary to ensure that the system has the technical, managerial and financial capability to comply with national primary drinking water regulation and requirements over the long term or (2) the use of DWSRF assistance will ensure compliance with the national primary drinking water regulations and requirements.

O. ENVIRONMENTAL REVIEW/ STATE ENVIRONMENTAL POLICY ACT:

North Carolina agrees to use its State Environmental Review Procedure (SERP) to comply and conform to the National Environmental Policy Act (NEPA) requirements. The SERP has been approved by the EPA Regional Administrator in Atlanta. The Administrative Procedures for DENR Intergovernmental Review and The State Clearing House Procedures for complying with The State Environmental Policy Act (G.S. 113A-1 through G.S. 113A-12) provide further overview as to how the SEPA review processes are conducted.

P. MAINTAIN THE FUND:

The State agrees that the Fund will be maintained in accordance with Title XIV of the Act and will be immediately credited with all payments, repayments of principal and interest on loans or other assistance made from the Fund, proceeds of any bond sale for which the Fund is used as security, interest earned on fund accounts, and any other source of income accruing to the Fund.

Q. PERPETUITY:

The State agrees that the fund balance shall be maintained and shall be available in perpetuity for providing financial assistance as authorized and limited by the Act.

R. TYPES OF ASSISTANCE:

The State agrees that monies in the DWSRF account shall be used only for the purpose set forth in Section 1452(f) of the Act and are limited to:

- 1) Making loans at an interest rate that is less than or equal to the market interest rate,
- 2) Buying or refinancing existing debt obligations within limitations provided by the Act,
- 3) Guaranteeing or purchasing insurance for local debt obligations,
- 4) Providing for a source of revenue or security for payment of DWSRF debt obligations, and
- 5) Earning interest on Fund account(s).

The State agrees to identify the types of assistance to be provided under the State's DWSRF program. The type of assistance to be provided for each project will be outlined in the annual IUP.

S. PRIORITY LIST:

The State agrees that loan assistance will not be provided to any drinking water project unless that project is on the State's comprehensive project priority list

developed under Section 1452(b) of the Act and EPA priority system guidance, with the exception of those projects described in Sections S. 2), 3) and 5). From the comprehensive priority list, the State agrees to develop a project priority list, detailing to the maximum extent practical, projects that will be funded. The project priority list will include the name of the public water system, a brief description or category under which the projects falls, the expected terms of financial assistance, and the population served by that system. Such assistance will be given with regard to the rank order of the project. With the exception of the State's by-pass procedures, projects on the project priority list will be funded in rank order. By-passed projects will be addressed in the following year to the extent practicable. In the event that there is an insufficient number of projects ready to proceed in any year, projects on subsequent priority lists or projects in the Fast Track Loan Program may be funded.

1) PRIORITY CRITERIA.

As authorized by NC S.L. 2005-454 Section 159G-35, see: http://www.ncleg.net/enactedlegislation/statutes/pdf/bychapter/chapter_159g.pdf, the following criteria apply to projects funded by the NCDWSRF:

a) GENERAL CRITERIA

In determining the priority to be assigned each eligible application, the Division shall consider whether the project will:

- i) Address the most serious risk to human health,
- ii) Facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act, and
- iii) Assist systems most in need on a per household basis.

The total priority points received shall be the sum of all points awarded for each categorical element.

b) PUBLIC HEALTH AND COMPLIANCE

Public health and compliance points may be awarded to a project based on the following criteria. A proposed project shall be necessary to facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act and to alleviate the type of public health concern for which points are awarded. A project shall receive only points in the highest sub-category for which it may qualify:

- i) Applications will be assigned a category as follows:
 - (1) All applications for a project that eliminates by consolidation/dissolution a public water system demonstrating a lack of technical, financial, and/or management capacity in accordance with the Safe Drinking Water Act, Sections 1402(b)(1) and 1414(h), and NCAC 15A 18C .0300, shall be placed in Category 1. The Division may generate the application for such a project.

- (2) All applications for a project that eliminates compliance problems due to existing violations of the NC Drinking Water Act or anticipated violations based on data and state or federal rulemaking shall be placed in Category 2.
 - (3) All applications for a project to improve the available water supply or treatment capacity to supply existing users; improve treated water quality; provide a permanent or emergency interconnection between systems; or rehabilitate, repair or replace an existing eligible item of infrastructure with no increase in capacity shall be placed in Category 3.
 - (4) All other eligible public water system projects shall be placed in Category 4.
- ii) All applications in Category 1 will be funded in priority order before applications in Category 2. Similarly all applications in Category 2 will be funded in priority order before applications in Category 3, and all applications in Category 3 will be funded in priority order before applications in Category 4.

c) **RELIABILITY**

A maximum of five points shall be awarded in the reliability categorical element to projects that propose to increase the reliability of the water system; points may be awarded for both Items (i) and (ii) up to the maximum, as follows:

- i) Projects that provide redundancy to critical treatment or delivery functions, such as interconnection, but excluding projects that provide emergency backup electrical power source, 3 points
- ii) Projects that provide emergency backup electrical power source, 3 points.

d) **AFFORDABILITY**

Points for affordability shall be determined by comparing the current monthly residential user cost to the median household income (MHI). User cost shall be calculated from water rates based on a use of 4,500 gallons. The median household income shall be determined in the service area of the water system. If median household income data is not available for the service area, data from the nearest comparable community area shall be used. The Division may use countywide median household income data if data for the service area or nearest comparable community area are not available. Points shall be awarded on the following scale:

Rates = 0% to .09% MHI	0 points
Rates = 0.10% to 0.19% MHI	2 points
Rates = 0.20% to 0.29% MHI	4 points
Rates = 0.30% to 0.39% MHI	6 points
Rates = 0.40% to 0.49% MHI	8 points
Rates = 0.50% to 0.59% MHI	10 points
Rates = 0.60% to 0.69% MHI	12 points
Rates = 0.70% to 0.79% MHI	14 points
Rates = 0.80% to 0.89% MHI	16 points
Rates = 0.90% to 0.99% MHI	18 points
Rates = 1.00% to 1.09% MHI	20 points
Rates = 1.10% to 1.19% MHI	22 points
Rates = 1.20% to 1.29% MHI	24 points
Rates = 1.30% to 1.39% MHI	26 points
Rates = 1.40% to 1.49% MHI	28 points
Rates = 1.50% or greater MHI	30 points

e) **SOURCE PROTECTION AND MANAGEMENT**

The maximum value to be given for source protection and management categorical elements is 15 points. Points shall only be awarded for existing activities or programs that efficiently protect the public health, as follows:

- i) Participation in source water protection activities; points may be awarded in Sub-Items (1) and (2) of this Item up to the maximum, as follows:
 - (1) Voluntary surface Source Water Protection program approved by the PWS Section, pursuant to the Safe Drinking Water Act, Section 1454 five points, or
 - (2) Voluntary wellhead protection program approved by the PWS Section, pursuant to the Safe Drinking Water Act, Section 1428 five points.
- ii) Efficient water use, as shown by the applicant's establishment and administration of the described programs; points may be awarded in Sub-Items (1), (2), and (3) of this Item up to the maximum, as follows:

- (1) Water loss reduction program, which includes water audits, comprehensive metering, and hidden leak detection, three points;
- (2) Cross-connection control program, three points;
- (3) Demand management strategies, such as:
 - (a) A water conservation incentive rate structure,
 - (b) Incentives for new or replacement installation of low flow faucets, showerheads and toilets, or;
 - (c) A water reclamation or reuse system receive three points per strategy.

f) **PROJECT PLANNING**

The maximum value - 3 points, the value of this categorical element is the sum of the points awarded to Item (i) and the points assigned to Item (ii):

- (i) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(1) - 1 point.
- (ii) The project demonstrates long range planning, through inter-local agreements, leading to systems of regional water supply - 2 points.

2) **EMERGENCY LOANS**

An intended use plan may be amended at any time to add projects addressing an emergency situation. Such projects include those where some type of failure was unanticipated or a serious public health hazard or a drought emergency is present or imminent and immediate attention is required to protect public health. EPA R-4 will be advised of these situations and these projects will be reported in the Annual Report.

3) **DISADVANTAGED COMMUNITY PROGRAM**

The North Carolina Disadvantaged Community Program (DCP) will provide additional subsidization as described in the Intended Use Plan for each DWSRF capitalization grant.

4) **LOANS FOR LAND ACQUISITION INTENDED FOR SOURCE WATER PROTECTION**

It is widely recognized that protecting and conserving land in delineated assessment areas has potential to maintain and improve raw drinking water quality. Such land acquisitions can be advantageous by reducing contaminants reaching the water intake. Therefore, the complexity and cost of treatment associated with contaminant removal and monitoring

may be reduced. EPA has long promoted the reduction of contamination as the best approach to ensuring safe, long-term sources of public drinking water. The loan program described herein is consistent with that philosophy. Additionally, the program herein will provide incentive for local entities to develop Source Water Protection Plans and submit them to the PWS Section for approval.

Low interest loans using DWSRF set-aside funds will be provided to finance land acquisition within watersheds that supply public drinking water. NC Legislature in G.S. 159G-35 established the authority of the Division to create such programs through direct negotiation with EPA (2005).

The intent of such land acquisitions must be protection and conservation in ways that safeguard a surface drinking water source. Some project examples include, but are not limited to, the following categories: creation of vegetated stream buffer zones, conversion of agricultural land to forested land, creation of wetland areas, removal of potential contamination sources, and protection of land from developmental pressures. Any project must be included as a management strategy within a local Source Water Protection Plan approved by the PWS Section.

The interest rate for these loans will be 1% per annum. Maximum repayment term is 20 years. Loans will be awarded in accordance with evaluations and priority rankings from an Application Review Committee.

Land financed within this program shall not be sold unless the following conditions are met:

- the water source is no longer a state-permitted, public drinking water source, and
- the terms of the repayment contract are fully satisfied.

Conservation easements obtained under this program are considered permanent and dissolvable only if the following two conditions are met:

- the source is no longer a state-permitted, public drinking water source; and
- the purchaser of the easement agrees to give up the easement to the land owner.

a) General restrictions:

- i) Loans are available only for projects that appear on the State approved Intended Use Plan, as submitted annually to the U.S. Environmental Protection Agency.
- ii) Loans are limited to units of local government who may act on behalf of a public drinking water system.

- iii) Public drinking water systems named on the loan application must derive a portion or all of their raw water from a surface source.
- iv) Applications must specify the public water supply source(s) and system(s) that will be the beneficiary of the land acquisition.
- v) The land acquisition project must be described as a proposed source water protection strategy in a Source Water Protection Plan approved by the PWS Section of NCDENR. (Note: An intent to award letter may be issued by the PWS Section if the applicant has a formal commitment with the PWS Section to develop a Source Water Protection Plan and a timeline for submitting the plan for approval.) Intent to award letters issued by the PWS Section will specify a deadline for obtaining Source Water Protection Plan approval. Failure to obtain approval by the deadline may result in nullification of any loan agreement between the PWS Section and the applicant. Final award will not occur until the Source Water Protection Plan is approved by the PWS Section.

Applications are accepted on a continuing basis.

The Application Review Committee awards Loans based on the following evaluation procedure . Committee participants review and score each application independently. Tabulated indicate project priority. The Committee then debates and discusses the initial score scores to establish final priority ranking. The decisions of the Committee are final.

- b) The review process considers the following categories when determining the priority of a potential project:
 - i) General information and geographical considerations.
 - ii) The Susceptibility Rating of the surface water intake(s) to be protected by the land acquisition.
 - iii) Land use intentions including any transformations or conversions.
 - iv) Procurement of matching or partially matching funds and demonstration of adequate security for loan repayment.
 - v) Supporting materials.
- c) This program is ongoing and subject to availability of set-asides to fund the program, demand for the program, and evaluation of impact resulting from the program. Program impact is evaluated based on the following criteria:
 - i) Number of acres conserved and protected for purpose of source water protection.

- ii) Number of public water systems creating a Source Water Protection Plan that include land conservation and protection as a primary objective.
- iii) Number and type of land-use improvements intended for source water protection.

5) FAST-TRACK LOAN PROGRAM

To move unobligated DWSRF funds more quickly into new projects, the PWS Section has created a Fast Track Loan (FTL) Program. Once any applicable ready-to-proceed dates have passed, the PWS Section makes unobligated funds from prior capitalization grants and revolved funds available to the FTL program. Under FTL program the PWS Section may award unobligated funds to any project that meets DWSRF eligibility criteria and that documents ready-to-proceed status. These projects are not listed in an IUP, but are reported in the Annual Report.

Because FTL applications are non-competitive by definition, applicants must waive consideration for additional subsidization in writing. Applications that do not waive consideration for additional subsidization are not eligible for the FTL program and will be prioritized during the next scheduled DWSRF application review period.

To ensure the availability of emergency loan funds under Section S. 2), the Public Water Supply Section does not intend to make loans from the Fast-Track Loan Program that would deplete the reserves below \$2 million. In the event that eligible applications for Fast Track Loans exceed the available supply, the Public Water Supply Section shall prioritize the applications as follows:

- first, on the ready-to-proceed date (earlier is higher), and
- second, on the population (smaller is higher) .

T. ANNUAL AUDIT:

The State agrees to have conducted, at least annually, an independent audit of the fund to be conducted in accordance with the auditing procedures of the General Accounting Office, including Chapter 75 of Title 31, United States Code. This annual audit may be conducted by the EPA Office of Inspector General at the option of the Inspector General. A primary purpose of this annual audit is to ensure that the State has in place provision and guidance to prevent waste, fraud and abuse of funds derived from the CGA. This independent and separate audit of the DWSRF will include financial statements, an auditor's opinion and reports on compliance and internal controls.

U. ANNUAL FEDERAL OVERSIGHT REVIEW AND TECHNICAL ASSISTANCE:

The State and EPA agree that EPA will conduct an annual oversight review, including on-site review, of the DWSRF program in accordance with Section 1452 of the Act and 40 CFR Part 35 Subpart K.

The State will provide, and EPA will review, evidence of progress toward meeting the goals and objectives of the current IUP, and will review progress toward correcting any deficiencies noted in the previous year's annual report or the previous year's oversight review. The annual review based on the Annual Report and the annual oversight will include a programmatic and fiscal evaluation to determine the long-term effectiveness of the program and fiscal management to maintain the long term stability of the Fund.

At any time, the State may request and EPA will provide within the limits of available program resources, technical assistance related to any issues involving the DWSRF program.

V. DISPUTE RESOLUTION:

The State agrees to work cooperatively with EPA to correct any deficiencies in the operation or management of the DWSRF program. If after reasonable effort at the staff level, the Regional Administrator determines that the State has not complied with its Capitalization Grant Agreement or with any requirements of the Act applicable to the DWSRF program, the Regional Administrator shall promptly notify the State of such non-compliance and the necessary corrective action. If the seriousness of the non-compliance warrants, informal or formal discussions or meetings may be initiated by either EPA or the State to resolve the non-compliance. Throughout the process, EPA and the State shall negotiate in good faith to resolve the issues between them so as to avoid the sanctions specified in Section 1452 and in the Rule. If the State fails to take the necessary corrective action, sanctions will be applied as specified by Section 1452 of the Act, and in the Rule, under the section entitled "Compliance Assurance Procedures." The State recognizes that the EPA Regional Administrator does not have the discretion of not imposing sanctions if issues remain unresolved.

It is desirable to have any deficiencies resolved at the lowest possible organizational level. The DWSRF Program Manager for the State and the SRF & Surface Water Grants Section Chief for EPA Region IV will work with EPA to resolve such deficiencies. Should such staff level efforts be unsuccessful, the unresolved issues may be elevated to a higher authority. Prior to such elevation, the EPA or State staff person will notify the EPA or State counterpart of the pending status. Throughout such resolution efforts, EPA and the State will negotiate in good faith to resolve the issues between the parties so as to avoid the sanctions specified in Section 1452, or the Rule, under the section entitled "Compliance Assurance Procedures," or 40 CFR Part 31, Subpart F.

In the event that the State has been adversely affected by a Regional Office action or omission, the State may request a review of such actions under the provision of 40 CFR Part 31, Subpart F.

This Agreement shall be effective commencing on 20 September, 2013.

FOR THE US ENVIRONMENTAL PROTECTION AGENCY:

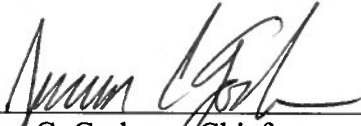


Thomas McGill, Chief
Grants and Infrastructure Branch
US Environmental Protection Agency, Region IV

8/2/13

Date

FOR THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES:



Jessica C. Godreau, Chief
Public Water Supply Section
Division of Water Resources
North Carolina Department of Environment and Natural Resources

7/22/13

Date