Final Intended Use Plan for the Kansas Water Pollution Control Revolving Loan Program

State Fiscal Year 2017

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I. Introduction

The State of Kansas Intended Use Plan (IUP) for the Clean Water State Revolving Fund (CWSRF) is prepared in accordance with the provisions of Title VI of the Clean Water Act of 1987, the Water Resources Reform and Development Act – P.L. 113-121, and the Consolidated and Further Continuing Appropriations Act, 2015 - P.L. 113-235 (a.k.a. the "Cromnibus") bill, and the FFY 2016 Consolidated Appropriations Act. With reference to the EPA MEMORANDUM "Adoption of Procedures for Implementing Certain Provisions of the Fiscal Year 2013 Appropriations Act Affecting the Clean Water and Safe Drinking Water State Revolving Fund (SRF) Programs", the "green project reserve" requirements and conditions provided under the FFY 2012 Consolidated Appropriations Act (P.L. 112-74) are carried over to the FFY 2013, FFY 2014, FFY 2015 and FFY 2016 funding. With reference to the EPA guidance document "FFY -2015 CWSRF Programmatic Terms and Conditions" dated March 9, 2015, EPA has provided this procedures guidance document applicable to FFY 2015 funding. Also, due to the Water Resources Reform and Development Act (WRRDA) additional guidance is provided in Appendix M in this Draft FFY 2016 IUP. With reference to the EPA guidance document "FFY -2016 CWSRF Programmatic Terms and Conditions" dated received by email March 10, 2016, EPA has provided this procedures guidance document applicable to FFY 2016 funding. This IUP is a required part of the process to request the FFY 2016 Capitalization Grant. The CWSRF program requires 20 percent state matching funds, and these funds have been previously provided for this FFY 2016 Capitalization Grant. The FFY 2016 Clean Water SRF Capitalization Grant allotment for the State of Kansas is $12,060,000. This IUP describes the intended uses for all funds available in the Kansas CWSRF program for SFY 2017, including the projects that Kansas expects to provide financial assistance in SFY 2017 and the near future, and an overview of how the state will comply with federally mandated requirements.

The Kansas CWSRF was established pursuant to the Clean Water Act of 1987 and by state statutes K.S.A. 65-3321 thru 65-3329, to establish the Kansas Water Pollution Control Revolving Fund (KWPCRF) to provide below market interest rate financing to local governments and eligible private entities for certain water quality projects. The implementing regulations are found at K.A.R. 28-16-110 thru 28-16-138. The KWPCRF operates through an Inter-Agency Agreement (IAA) between the Kansas Department of Health and Environment (KDHE), the Kansas Department of Administration (KDA), and the Kansas Development Financing Authority (KDFA). The IAA also provides for joint administration of the Kansas Public Water Supply Revolving Fund (the "drinking water" SRF). The KDHE is responsible for all aspects of the KWPCRF and administers the technical and environmental aspects of the program, the KDA provides accounting and fiscal management services, and the KDFA issues bonds to provide state match and leveraging funds as well as administering all aspects of continuing disclosure and other requirements related to the bonds issued for KWPCRF implementation. The KWPCRF provides low-cost financial assistance for high priority wastewater system, stormwater and nonpoint source projects. Since the program's authorization in 1988, Kansas has awarded over $1.17 billion in assistance to over 450 borrowings, including small and large municipalities and nonprofit organizations. In the upcoming year, Kansas has identified over $76 million in high-priority water quality and asset management projects that could be funded (see Appendix A).

How the CWSRF Program Operates

Every year since the inception of the KWPCRF program in 1988/1989, the federal government has appropriated funds for the KWPCRF. These capitalization grants are distributed to states using a formula outlined in the Clean Water Act Amendments of 1988. Since 1989, the Kansas CWSRF has received over $358 million in federal capitalization grants. In addition, as required by the federal legislation, the state of Kansas has provided matching funds equal to 20 percent of the capitalization grants by issuing state match revenue bonds. In some years, the KWPCRF has leveraged the program by issuing additional revenue bonds. The leveraging bonds allow Kansas to fund more

projects sooner by making additional funds available. The KWPCRF receives an annual independent financial audit.

II. State Fiscal Year 2017 Project Funding

The Kansas FFY2016 federal capitalization grant will be $12,060.000. KDHE has "reserved the right" to utilize 4% of the FFY 2016 cap grant amount, $482,400, for administration costs, from this and future capitalization grants. Congress has mandated that 10% of this 2016 amount ($1,206,000) be put towards projects that qualify under the EPA Green Project Reserve (GPR), and the states are encouraged to provide 20% GPR. In addition, the FFY 2015 Consolidated and Further Continuing Appropriations Act, 2015 - P.L. 113-235 allows that not more than 30 percent of the national CWSRF appropriation over $1 billion can be provided as additional subsidy ($3,618,000) and in accordance with WRRDA criteria can only go to municipal or intermunicipal, interstate, or State agencies. The FFY 2016 Consolidated Appropriations Act mandates that a minimum additional 10% ($1,206,000) be directed to additional subsidy. Also, EPA has determined an additional 10% of the FFY 2016 cap grant can be provided as additional subsidy without considering the WRRDA restrictions. For Kansas, the 10% amount of additional subsidy from the FFY 2016 cap grant is $1,206,000, and the 30% amount is $3,618,000 that can be put towards providing an additional subsidy to borrowers which can only go to municipal or intermunicipal, interstate, or State agencies. This results in a total of $4,824,000 for additional subsidy. Kansas will work to provide the maximum additional subsidy amounts into loans as principal forgiveness to projects.

Further, federal law now requires all CWSRF projects funded in SFY2017, regardless of funding source, must pay their workers the federal Davis-Bacon wage rates for their job classification, must comply with American Iron and Steel (AIS) requirements, and projects which repair, replace, or expand treatment works must provide a Fiscal Sustainability Plan (FSP) including an Asset Management Plan (AMP) for the wastewater utility. (Reference Appendix E which is the EPA program guidance applicable to the FFY 2012, FFY 2013, FFY 2014, FFY 2015, and now FFY 2016 funding. Also with reference to Appendix M which is the guidance for the implementation of the changes to the Clean Water SRF programs from the Water Resources Reform and Development Act – P.L. 113-121), please also note the WRRDA required KDHE write an "Affordability Criteria" guidance document for the KWPCRF, which was completed by the September 30, 2015, deadline. This document has been prepared and distributed through a public hearing process and is available on the KDHW website at http://www.kdheks.gov/muni/index.htm . Also, in Section 603(b)(13) WRRDA requires KDHE obtain a certification from all applicants, in a manner determined by the Governor, that the facility planning has studied and evaluated cost and effectiveness and efficiency of water use, reuse, recapture and conservation, and energy conservation, for all projects funded on or after October 1, 2015. These KDHE guidance documents are also available on the KDHE website at http://www.kdheks.gov/muni/index.htm .

In SFY2017, Kansas expects to finance many wastewater collection and treatment projects with the federal funds from the FFY 2016 Clean Water SRF Capitalization Grant, and continue to pursue providing funding to stormwater infrastructure and nonpoint source pollution control projects, while also meeting the federal requirements to provide 10% and encourage 20% of FFY 2016 funding be provided to GPR designs, and provide the required additional subsidization. These subjects are discussed in further detail below:

- A portion of the FFY 2016 principal forgiveness funding ($2.15 M) is being allocated to one selected project through a Major Amendment as presented in Appendix A. In the recent years federal appropriations the amount of additional subsidy provided and allowed for principal forgiveness has declined, but now for FFY 2015 and FFY 2016 has increased substantially. These numbers are summarized as follows:

FFY		Cap Grant		Maximum P. F.		Minimum P.F.
ARRA	$	35,374,200	$	35,374,200	$	17,787,100
2010	$	18,391,000	$	9,181,294	$	3,678,200
2011	$	13,328,000	$	4,116,837	$	1,235,051
2012	$	12,757,000	$	1,063,482	$	708,988
2013	$	12,051,000	$	851,480	$	567,654
2014	$	12,656,000	$	1,033,065	$	688,710
2015	$	12,591,000	$	3,777,300	$	0
2016	$	12,060,000	$	4,824,000	$	1,206,000

Due to the prior trend of reduced funding for additional subsidization (principal forgiveness), KDHE had been restricting the provision of principal forgiveness in new Loan Agreements dated after February 23, 2012. KDHE continues make every effort to provide the percentage amounts of principal forgiveness as indicated in prior loan agreements, and with the additional subsidization funds available from the FFY 2016 cap grant will provide additional subsidy funding through amendments to prior projects with qualifying costs for Green Project Reserve designs. The FFY 2015 cap grant provided $3,777,300 funding for additional subsidization (principal forgiveness) which has been provided in part to fully fund previously selected Green Project Reserve design projects at Johnson County - Lake Gardner, and also Pratt and Garden Plain. Also, KDHE will begin to provide principal forgiveness in the future to all prior qualifying loans in accordance with the prior procedures presented in Appendix F of this Draft IUP. Please note the new Affordability Criteria guidance for the KWPCRF will affect the methods of distributing the principal forgiveness additional subsidy, and so the remaining principal forgiveness finding for FFY 2016 and in the future for FFY 2017 will be allocated in accordance with the new Affordability Criteria guidance for the KWPCRF in the future. The Kansas Affordability Criteria policy and procedures document has been prepared, comments received, and the final document accepted by EPA.

With the additional principal forgiveness now available from the $12,060,000 amount from the FFY 2016 Cap Grant, KDHE has developed new procedures to distribute these funds based on financial need rather than in support of the EPA Green Project Reserve efforts. If any additional new projects are selected to receive principal forgiveness, it is planned to present these projects in a future Amendment to the FINAL FFY 2017 IUP. Principal forgiveness procedures include:

All loans continue to receive an interest rate established in accordance with K.A.R. 28-16-113. As an example, for June 2016 the KWPCRF loan interest rate is 2.00%.

Principal forgiveness will exclude the costs of interest during construction and service fee charges during construction. The federal Cap Grants are the source of funding that can provide principal forgiveness from the KWPCRF loans.

Moving into the future, while projects will continue to be encouraged to include "green components" as defined by EPA and KDHE in the design components no "additional subsidy" principal forgiveness will be provided on this basis. The Cap Grants are the funding source that can allocate principal forgiveness to the KWPCRF loans.

KDHE will now complete the effort to provide the amounts of principal forgiveness for GPR designs as indicated in prior loan agreements, and so additional principal forgiveness

funding will now be provided for all qualifying EPA and KDHE GPR costs, including increased costs due to bid opening and change orders. The 2015 cap grant GPR requirement is $1,259,100, which is satisfied by the Loan Amendment to the Johnson County – Lake Gardner project Amendment No. 3 dated 7/7/2015 in the amount of $2,573,893. The remaining additional principal forgiveness amounts now provided by Congressional appropriation from the FFY 2016 Cap Grant (minimum required $1,206,000, maximum available $4,824,000) could also be provided to new loan agreements in accordance with the updated procedures as accepted by EPA. However, EPA has also determined that 10% of the additional subsidy funding from the FFY 2016 cap grant could be provided as additional subsidy without considering the WRRDA restrictions, and KDHE is considering this option.

Seven projects potentially qualify for the Green Project Reserve as shown on Appendix A. Estimated funding for these projects totals $4.2 M, or 35 percent of the FFY 2016 cap grant.

In conformance with the state legislation establishing the KWPCRF, KDHE will insure a minimum 10% of the monies will be made available to municipalities with 5,000 population or less.

Appendix A includes the Kansas project funding list, or fundable list. This list first includes the projects that Kansas has funded in the prior year, listed in alphabetical order. Projects to potentially apply for funding from FFY 2016 funds in SFY 2017 are listed as projects I.D. No. 1 through 25 in alphabetical order, and projects with potential to apply for funding in future years are also listed in alphabetical order as projects I.D. No. 26 through 45, and these projects can apply for funding at any time. The expanded Project Priority List is Appendix I and the Project Priority System is Appendix J, available on the KDHE website.

III. Short and Long Term Goals

Kansas has developed short-term and long-term goals for the KWPCRF program. The short-term goals reflect goals for the 2016 and 2017 fiscal years.

Short-Term Goals

1. *To provide financial assistance to water quality improvement projects for discharge to streams and water bodies within "high quality watersheds" consistent with the provisions of the Project Priority System.*

   Planned Actions: Typically, projects to resolve these types of issues must complete an Antidegradation Review through the NPDES permitting process. KDHE Bureau of Water (BOW) staff issue these NPDES permits and Antidegradation Review documents for public review and comment. As these types of projects occur and develop and the NPDES permits are issued, KWPCRF staff will continue to include these new and necessary projects on the Project Priority List, and move these projects onto the IUP for funding as the projects progress through the KWPCRF application and funding process.

2. *To provide financial assistance for sewerage facilities to municipalities with population less than 5,000.*

   Planned Actions: As these types of projects occur and develop, KWPCRF staff will continue to provide any and all additional administrative effort to support and coordinate with local municipal staff and consultants to complete the KWPCRF application and funding process.

3. *To assure compliance with Water Quality Standards and effluent limitations through encouraging construction of sewerage improvements in support of KDHE Permitting and Enforcement activities.*

   Planned Actions: Typically, projects to resolve these types of issues are required by enforcement through the NPDES permitting process. KDHE BOW staff issue these NPDES permits with Schedules of Compliance for public review and comment. As these types of projects occur and develop and the NPDES permits are issued, KWPCRF staff will continue to include these new and necessary projects on the Project Priority List, and move these projects onto the IUP for funding as the projects progress through the KWPCRF application and funding process.

4. *To encourage municipalities to use the KWPCRF for solving problems and providing improvements related to public health protection, water quality improvement, sludge handling improvements and biosolids reuse, asset management, energy efficiency, and wastewater treatment facilities compliance through the construction of sewerage projects.*

   Planned Actions: KDHE BOW staff will continue to make presentations to professional and municipal management organizations to present and explain the opportunity of funding by the KWPCRF. KWPCRF staff will continue to coordinate development of projects with other funding agencies. The KWPCRF will also continue to manage several ongoing contracts with technical experts that provide on-site technical assistance, including compliance operations review, energy efficiency review, and review for improved operations to reduce discharge of nutrients. KDHE BOW will implement the requirements of WRRDA section 603(b)(13) regarding facility planning.

5. *To assure compliance with domestic sewage sludge reuse criteria and disposal practices through construction of any necessary sludge handling improvements to comply with the 40 CFR Part 503 EPA regulations.*

   Planned Actions: As these types of projects occur and develop, KWPCRF staff will continue to provide additional administrative effort to support and coordinate with local municipal staff and consultants to complete the KWPCRF application and funding process.

6. *Fund green infrastructure, water and energy efficiency and environmentally innovative projects.*

   Planned Actions: Congress has directed that at least 10 percent of the FFY 2016 capitalization grant be allocated towards EPA "Green Project Reserve" projects and the states are encouraged to provide 20%. Kansas will continue to solicit green infrastructure, water and energy efficiency, and environmentally innovative projects for this SFY 2017 project priority list and future years funding. The KWPCRF program will work with eligible municipalities to ensure that the 10 percent minimum is met, and hopefully the 20% encouraged amount is met. Kansas has recently adopted revisions to the KWPCRF statutes to establish a linked-deposit investments approach to finance these types of non-point source pollution control projects. (Please note, due to federal changes presented in the WRRDA law, direct funding could no longer be provided to not-for-profit project sponsor applicants. However, EPA has determined that 10% of the FFY 2016 cap grant amount can again be utilized without the WRRDA restrictions, and KDHE is considering this.) Kansas will require and approve business cases for projects that have been determined to not categorically qualify for the Green Project Reserve, as described in Appendix E. Business cases are posted on the KDHE website (www.kdheks.gov/muni/index.htm) upon financing approval.
   The KWPCRF has been successful in implementing this aspect of the federal program.

KDHE has now revised the methods of providing the additional subsidization to projects to be based on abnormally high cost projects resulting in abnormally high user charge impacts when compared to median household income of the service area population. See Appendix E and Appendix F.

7. *Provide the maximum allowable amount of principal forgiveness available to selected projects.*

   Planned Actions: Projects for communities that could not otherwise afford necessary projects will continue to be coordinated with the CDBG grants program and the Rural Development grant and low interest loan funding programs thru the Kansas Interagency Advisory Committee (KIAC) process. KDHE will work to assure a portion of the available principal forgiveness is fully utilized in amendments to prior funded deserving projects ($2.15 M), and has revised the methods of providing the additional subsidization to projects to be based on abnormally high cost projects resulting in abnormally high user charge impacts when compared to median household income and other aspects of the service area population.
   Please also note the WRRDA required KDHE write an "Affordability Criteria" guidance document for the KWPCRF, to be completed by September 30, 2015. This document has been prepared through a separate public hearing process, and is available on the KDHE website at http://www.kdheks.gov/muni/index.htm . The new Affordability Criteria guidance for the KWPCRF changes the options for future distribution of the principal forgiveness additional subsidy.

8. *To encourage municipalities to use the KWPCRF to implement EPA's Sustainability Policy.*

   Planned Actions: EPA's Sustainability Policy encourages states to develop projects and provide funding to projects that repair existing infrastructure ("Fix it First"), promote effective utility management, or provide long term planning. These Sustainability Policy principals are also implemented through the KIAC discussions with other agencies. The WRRDA federal law now requires all CWSRF projects funded in SFY2017 and future years which repair, replace, or expand treatment works must provide a Fiscal Sustainability Plan (FSP) including an Asset Management Plan (AMP) for the wastewater utility. The Fiscal Sustainability Plan is explained further in Appendix E and is available on the KDHE website at http://www.kdheks.gov/muni/index.htm .

9. *Expedite project development and construction by encouraging projects to begin construction within one year of providing the KWPCRF low interest loan.*

   Planned Actions: The KWPCRF program will continue to accomplish a short timeframe between project application and construction start. The new EPA goal is to have all funded projects under construction within one year of capitalization grant award, similar to the CDBG program in Kansas. For large cost and scope projects, this has resulted in the need for separate loan agreements for planning and design costs. The program will also continue to draw and spend the federal capitalization grant funds as quickly as possible, by spending federal funds "first in, first out" (FIFO) to any project that includes all current federal requirements as soon as federal funds are available and until available federal funds are exhausted. Additional funding for all projects is available from state match revenue bond proceeds and from "recycled" monies held in the KWPCRF, and additional funds can always be obtained for the KWPCRF projects as needed by the sale of leveraging revenue bonds. The application review and approval process will continue to be streamlined to the maximum extent possible, and the KWPCRF will work closely with applicants to ensure their projects are ready to proceed to construction within the one year time frame goal.

10. *Continue implementing of the current and successful financial model.*

Planned Actions: The KWPCRF continues to work with the Kansas Development Finance Authority (KDFA) and the financial consultants to the KWPCRF, to monitor and track the current status of the KWPCRF and the KPWSRF under the cross-collateralization agreements of the Master Financing Indenture (MFI), and update the financial modeling software as deemed appropriate. KDHE will continue to work with other state agencies under the IAA to continue implementation of the KWPCRF, including management of the significant amount of prepayments now being received.

11. *Operating Procedures.*

Planned Actions: The policies and procedures of the KWPCRF are continually reviewed and updated as necessary, to simplify and improve efficiency of the application, approval, financing, payments, and close out processes.

Long-Term Goals

1. *To maintain a self-supporting, effective and efficient, revolving loan program through the Kansas Water Pollution Control Revolving Fund to provide the type and amount of assistance most advantageous to local communities and to provide low-cost financing for important water quality projects in order to improve and protect water quality and public health while maintaining the perpetuity of the CWSRF.*

Planned Actions: KDHE staff routinely review these issues. In the future KDHE in conjunction with KDFA and the legal and financial consultants to the KWPCRF will continue to review the long- term capabilities of the KWPCRF to meet all financial obligations of the leveraged borrowings and also generate adequate service fee revenue to support the program in the future. Kansas uses a financial planning model to guide decisions on leveraging capability, bond debt coverage factors, and cash investments. Kansas looks to balance the goals of maximizing subsidies while maintaining the fund in perpetuity. These efforts will continue in the future with the leveraging or State Match revenue bond issues, and when preparing the Projected Revenue Certificate (PRC) as required by the revenue bond process. Continue the coordination of project development and shared financing with the CDBG grant program and the Rural Development grant and loan program thru the KIAC process.

KDHE in conjunction with the Kansas Department of Administration has contracted for annual independent audits of the KWPCRF, and will continue this practice. The Independent Auditors Report is presented on the KDHE website at www.kdheks.gov/muni/index.htm.

2. *To continue to fund water quality improvement, sludge handling improvements, public health protection, and other eligible projects on a priority basis as presented in the Project Priority List.*

Planned Actions: Continue the current program, which is proving successful in resolving water quality impairments, providing for asset management of existing infrastructure, improving compliance with EPA Part 503 sludge disposal and biosolids reuse regulations, and improving the sanitary conditions and water quality of Kansas streams.

3. *To support implementation of Water Quality improvements plans as presented within the Kansas Water Plan and TMDL plans written by KDHE and approved by EPA.*

Planned Actions: The KWPCRF is now providing funding for water pollution reduction projects as recommended by waste load allocations presented in Total Maximum Daily Load (TMDL) plans, and will continue to expand funding these needed projects into the future.

4. *To provide funding to non-traditional borrowers for water quality improvement and public health protection projects, including non-point source pollution control projects. Expand CWSRF accessibility by creating financial assistance programs that address nonpoint source control and other nontraditional CWSRF projects.*

   Planned Actions: Kansas had been successful in the past bringing important nonpoint source and other nontraditional CWSRF projects to the program through use of the principal forgiveness aspects of the CWSRF, implemented since FFY 2009. These types of projects have challenges in obtaining financing due to a lack of ongoing revenues, and so have been funded in the past with 100% principal forgiveness. These approaches could no longer implemented as the new federal law WRRDA does not allow direct funding to not-for-profit project sponsor applicants, however the 10% portion of FFY 2016 additional subsidy amounts can be distributed without the WRRDA restrictions. The additional subsidy principal forgiveness will in the future be provided in support of the new KWPCRF affordability criteria for high cost projects. KDHE now has legislation to implement a linked-deposit non-point source funding investment program to the Kansas legislature. House Substitute for SENATE BILL No. 36 was passed and signed by the Governor. KDHE has now developed contracts and documents and is marketing the program. The use of a “linked deposit” investment program can continue to access the KWPCRF program for cost-effective investments financing for non-point source pollution control projects. The new MFI adopted December 2010 has provided a process for non-traditional borrowers to receive loans and principal forgiveness in these loans.

5. *Work with other state funding sources to coordinate water quality and asset management financing.*

   The KWPCRF program routinely meets with other agency programs that finance wastewater infrastructure in Kansas, including the U.S. Department of Agriculture (USDA) Rural Development program, the Department of Housing and Urban Development’s (HUD) Community Development Block Grant (CDBG) program as administered by the Kansas Department of Commerce, and meets monthly with other state agencies that are parties to the IAA for the KWPCRF and KPWSRF. The financing programs meet with potential applicant cities to discuss program application requirements and present funding packages, which can maximize cost savings to the applicant cities and improve efficiency of all programs.

6. *Use effective outreach techniques reach important water quality priorities and maintain a high pace level.*

   The KWPCRF is committed to bringing projects to the program that address the state’s most important water quality priorities. Various outreach techniques are used, including meetings with watershed organizations, participation in conferences, brochures, KIAC meetings, and personal visits to communities. The KWPCRF expects to continue these efforts and to respond to evolving water quality and environmental priorities in the state and nationally.

7. *Expand CWSRF accessibility by creating financial assistance programs that address nonpoint source control and other nontraditional CWSRF projects.*

Kansas had been successful in the past bringing important nonpoint source and other nontraditional CWSRF projects to the program through use of the principal forgiveness aspects of the CWSRF, implemented since FFY 2009. These types of projects have challenges in obtaining financing due to a lack of ongoing revenues, and so have been funded in the past with 100% principal forgiveness. These approaches had no longer been implemented as the federal law WRRDA does not allow direct funding to not-for-profit project sponsor applicants, however the 10% portion of FFY 2016 additional subsidy amounts can be distributed without the WRRDA restrictions. The additional subsidy principal forgiveness will in the future be provided in support of the new KWPCRF affordability criteria for high cost projects. KDHE now has legislation to implement a linked-deposit non-point source funding investment program to the Kansas legislature. House Substitute for SENATE BILL No. 36 was passed and signed by the Governor. KDHE has now developed contracts and documents and is marketing the program. The use of a "linked deposit" investment program can continue to access the KWPCRF program for cost-effective investments financing for non-point source pollution control projects.

8. *Expand available financing by issuing KWPCRF leveraged bonds as and when needed.*

Planned Actions: KDHE with the assistance of KDFA periodically leverages by issuing tax-exempt revenue bonds secured jointly by the KWPCRF and the Kansas Public Water Supply Revolving Fund thru cross-collateralization, which enables funding for a greater number of projects than would otherwise have been possible while securing the continued financial security of the previously issued revenue bonds. The KWPCRF program has in the past experienced greater demand for funding than it would be able to service without leveraging. Leveraging decisions are made based on funding needs, modeling and financial analysis to ensure additional funds are needed and can be spent in a timely manner, while complying with all requirements of the Internal Revenue Service (IRS) for tax exempt bond status and all conditions of the Security and Exchange Commission (SEC) of the U. S. Treasury for tax exempt revenue bonds.

IV. Allocation of Funds

a. Criteria and Method for Distribution of Funds

The Kansas Project Priority Ranking System is Appendix J. The Priority Ranking System was updated in April 2016 to reflect changing environmental and water quality priorities in Kansas. The ranking criteria emphasize high priority waterbodies, implementation of TMDL waste loan allocations, projects proactively addressing needs, and projects addressing enforcement and compliance issues. In addition, projects receive consideration for implementation of green infrastructure, energy efficiency, water efficiency and environmental innovation. Project reviews also consider the EPA Sustainability Policy.

After projects are ranked according to the criteria a Project Priority List is developed, see Appendix I. Projects are further evaluated on their readiness to proceed to a financing agreement and into construction in part based on environmental review and having obtained easements and/or any necessary permits required prior to construction. Projects may receive initial planning and design low interest loan funding to assist the project development process.

All projects targeted to receive FY 2016 funding are placed on the IUP list of projects to be funded (see Appendix 1, projects I.D. Nos. 1 through 25).

Bypass Procedures

Kansas may bypass projects on the IUP list of projects to be funded if there is an unforeseen delay in project development and/or the financing plan. Also, any other projects from the Project Priority List may move to the funding list based on the readiness to proceed and project priority ratings.

Additional low interest loan funding is available for any previously funded project for any construction improvement eligible to be funded by the KWPCRF.

Any project not funded in the current year will retain the priority rating and continue to be included on the IUP in the future, but would be subject to the eligibility and funding considerations applicable to the future funding conditions.

All projects must be on the Project Priority List in order to receive funding. Anytime the "project bypass" procedure is implemented this will be explained in the Annual Report.

b. Types of Projects to be Funded and Financing Rates

Section 212 Projects

All loans to Section 212 projects and also including Nonpoint Source (NPS) projects which qualify under the Green Project Reserve will continue to receive an interest rate established in accordance with K.A.R. 28-16-113. Please see Appendix M for the list of expanded eligibilities allowed by WRRDA.

The financing term for most projects will be 20 years, a shorter repayment period is available if desired by the applicant.

Nonpoint Source and Estuary Protection Projects

Nonpoint source activities (not specific projects) funded by the KWPCRF appear in the "Kansas Nonpoint Source Pollution Management Plan 2010 Update" dated April 2011 developed by the Kansas Department of Health and Environment. Please see Appendix M for the list of expanded eligibilities allowed by WRRDA.

There are no estuaries in Kansas.

Green Project Reserve

Projects that qualify (in whole or in part) for the Green Project Reserve as Energy Efficiency, Water Efficiency, Green Infrastructure or Environmentally Innovative (as defined by U.S. EPA's 2012 CWSRF Procedures in Appendix E will be posted on the KDHE website.

Disadvantaged Communities and Sustainability Policy

In its FFY2016 appropriations, Congress requires states to provide additional subsidization. Kansas has an amount of $4,824,000 available to provide additional subsidy to loan recipients from the FFY 2016 funding. In Kansas, additional subsidy is provided as principal forgiveness. A minimum of $1,206,000 of principal forgiveness is required in the FFY 2016 appropriation and a maximum $4,824,000 can be provided. Kansas will first provide additional subsidy as principal forgiveness to one selected GPR project as a Major Amendment ($2.15 M) as shown in Appendix A from the funds available. Also, KDHE will

now complete the effort to provide the amounts of principal forgiveness for GPR designs as indicated in prior loan agreements, and so additional principal forgiveness funding will be provided for all qualifying EPA and KDHE GPR costs, including increased costs due to bid opening and change orders. KDHE is reconsidering prior methods to distribute the 10% additional subsidy funds that are not subject to the WRRDA restrictions.

Congress also asked states to direct the subsidies to disadvantaged communities and sustainability projects, to the extent possible. The KWPCRF will continue to work with the CDBG grant program and the Rural Development grant and loan program through the Kansas Interagency Advisory Committee (KIAC) process to provide suitable financing for high cost projects, as discussed further below. The additional principal forgiveness amounts now provided by Congressional appropriation from the FFY 2016 Cap Grant will be provided to new loan agreements in accordance with the updated procedures which have now been developed. KDHE has now changed the methods of providing the additional subsidization to projects to be based on abnormally high cost projects resulting in abnormally high user charge impacts when compared to median household income of the service area population.

1. Disadvantaged Communities

All projects undergo a financial capability review. The KWPCRF collects substantial information from all project applicants including budget projections and impact to user charge rates.

The KWPCRF program routinely meets with other agency programs that finance wastewater infrastructure in Kansas, including the U.S. Department of Agriculture (USDA) Rural Development (RD) grant and loan program, and the Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) program as administered by the Kansas Department of Commerce. The financing programs meet with potential applicant cities in KIAC meetings to discuss program application requirements and present funding packages, which can maximize cost savings to the applicant cities and improve efficiency of all programs. A description of the KIAC process can be found on the Kansas Department of Commerce – Community Development Block Grant program website at http://ks-kdoc.civicplus.com/DocumentCenter/Home/View/165 ,click on "KIAC Brochure". The KIAC meetings are a collaborative process between the funding agencies. While no community or project will be denied the opportunity to apply to any or all funding programs, the KIAC process significantly improves the efficiency of the efforts by the applicant communities and improves the ability of the applicant to successfully obtain funding. If an applicant does not qualify for a CDBG grant or grant funding from RD, or if joint CDBG/KWPCRF grant/loan funding or joint RD/KWPCRF grant/loan funding or a KWPCRF-only low interest loan is a better financial option for the applicant community, the SRF loan is provided. The joint funding of projects also reduces the potential for loan defaults in the KWPCRF program. KDHE is changing the methods of providing the additional subsidization to projects to be based on abnormally high cost projects resulting in abnormally high user charge impacts when compared to median household income and other aspects of the service area population.

2. Sustainability Policy

The KWPCRF is committed to promoting sustainable design and management of wastewater utilities and clean water resources, as an example, the use of wastewater treatment lagoons in small communities.

EPA's Sustainability Policy has identified three categories of projects that help promote sustainable design and management of wastewater utilities. The KWPCRF is implementing this policy as outlined. The WRRDA federal law now requires all CWSRF projects funded in SFY2017 and future years which repair, replace, or expand treatment works must provide a Fiscal Sustainability Plan (FSP) including an Asset Management Plan (AMP) for the wastewater utility, found at http://www.kdheks.gov/muni/index.htm . The Fiscal Sustainability Plan is explained further in Appendix E. The categories and types of eligible projects are described below.

- Fix it First projects. The main principle is that projects in currently established areas, which are still suitable for use, should be encouraged with priority over projects in undeveloped areas. The repair, replacement and upgrade of this infrastructure is encouraged. Projects that may qualify as Fix it First projects include:

  - Projects that are critical to assuring continued compliance with NPDES discharge limits in existing facilities.

  - Upgrades to existing infrastructure in growth areas to spur development/ redevelopment in these areas, rather than in unplanned or undeveloped areas.

  - Rehabilitation of existing wastewater treatment systems without expansion beyond a normal growth rate in the community or to service infill areas in the community.

- Effective utility management. Plans, studies and projects that help improve the technical, managerial and financial capacity of assistance recipients to operate, maintain and replace their infrastructure. The principle is that improved stewardship of the existing infrastructure will help improve their sustainability and extend the useful life.

- Planning. Preliminary planning, development of alternatives, and capital projects that reflect the full life cycle cost of infrastructure, conserve natural resources or use alternative approaches to integrate natural systems into the built environment. Potential projects include:

  - Projects that are identified through current facility planning (or similar efforts) as being critical to protecting long-term investments (federal, state and local) in Kansas community wastewater treatment facilities.

  - Projects consistent with local or regional land use plans.

V. Financial Management

a. Source of State Match

The KWPCRF FFY2016 appropriation of $12,060,000 requires state matching funds of $2,412,000 (20 percent). A portion of this state match funding in the amount of $524,200 had previously been provided by sale of state match bonds on December 18, 2014, and has been spent for payments to ongoing projects. A portion of this state match funding in the remaining necessary amount of $1,887,800 has been provided by sale of state match bonds on December 21, 2015, and has been spent for payments to ongoing projects. The total amount of state match bonds sold on December 21, 2015, was $2,500,000, and any remaining funds will be applied to any state match needs for future cap grant funds provided to the KWPCRF. The state match bonds will be repaid using interest earnings from assistance agreements and on investments.

b. Fee Income

As established by K.A.R. 28-16-113 the gross interest rate for a KWPCRF loan shall include the service fee. Assistance recipients are assessed a service fee of 0.25%, which is included within the gross interest rate. The fee income is used to help cover the costs of administration of the KWPCRF by paying for a portion of KWPCRF staff salary and benefits, costs incurred by other state agencies under the IAA, costs of annual independent financial audits, ongoing costs of rent, travel, communications, office equipment, etc., for the KWPCRF program, and also service fees are used for other salaries and similar expenses of administering 106 activities such as the NPDES permit program. As service fees are earned on the FFY 2016 capitalization grant, $86,000 of service fees are expected to be deposited into the CWSRF as "program income earned during the grant period", in accordance with the 2005 policy guidance memo by EPA. See also Appendix H.

c. Program Administration

Up to 4 percent of the capitalization grant can be used for administration of the KWPCRF by KDHE. KDHE has "reserved the right" to utilize 4% of the FFY 2016 cap grant amount, $482,400, for administrative costs, from this or future cap grants. This is supplemented by the 0.25% service fee collected on repayments. The KWPCRF now has approximately $4.1 M in banked administrative funds from capitalization grants which can only be used for administration of the KWPCRF program into the future.

d. Anticipated Cash Draw Ratio

The KWPCRF uses the cash flow method of leveraging the CWSRF. The federal capitalization grants are **not** used as security on the bonds. For the FFY2016 Capitalization Grant, the KWPCRF will continue to follow the EPA Memorandum "Clarification of Cash Draw Rules for Leveraged SRF Programs" (August 26, 2011). The entire amount of state matching funds for the 2016 cap grant has been deposited to the KWPCRF and has been paid to loan recipients. The Payment Schedule in Appendix B reflects this plan. State match has been provided before the payment of capitalization grant funds was received, as shown on the schedule in Appendix B, and all 2016 state match funds were disbursed before any 2016 federal funds are drawn for project payments, therefore the 2016 grant will be drawn at a 100% proportionality ratio.

e. Transfer of Funds from the Drinking Water State Revolving Fund

The KWPCRF has not and does not currently plan on transferring funds to or from the Kansas DWSRF in SFY2017 or future years.

f. Estimated Sources and Uses

The Sources and Uses of Funds table in Appendix C identifies the estimated sources and the uses all of the available funds in the KWPCRF in SFY2017. Sources of funds include federal capitalization grants and state matching funds, as well as repayments from existing loans. The KWPCRF frequently reviews the need to sell additional leveraging bonds, and additional bonds will be sold as and when needed. The potential need will be reviewed prior to the end of SFY 2017. Investment earnings and service fees are also sources of funds shown in Appendix C.

In keeping with the objectives of the KWPCRF, the majority of the available funds are used to pay for municipal wastewater collection and treatment water quality projects construction and engineering. Funds are also used to pay for program administration and repayments are used first for debt service on leveraged and state match bonds, and then become available for new loans.

The proposed FFY 2016 Cap Grant payment schedule can be found in Appendix B.

g. Financial Management Strategies

Comprehensive financial planning is essential for the KWPCRF. Financial planning is used to determine appropriate investment strategies, leveraging practices, use of additional subsidies, and annual and long term financing capacity. The KWPCRF is always striving to balance the need to provide as much low-cost financing as possible while ensuring that the fund can continue to operate in perpetuity. Each year, KDHE and the partner agencies and various consultants review the financial conditions of the KWPCRF, including the need and timing to sell leveraging bonds.
The KWPCRF is in full conformance with the cash draw policies as presented in the EPA Memorandum, "Clarification of Cash Draw Rules for Leveraged SRF Programs" (August 26, 2011). The MFI reflects the federal capitalization grant is not and will not be used to secure leveraged bonds issued by the KWPCRF program.

The KWPCRF leverages periodically as necessary to increase the funds available for assistance. A leveraging bond issue will be considered in late SFY 2017. The leveraging capacity of the program is substantial due to the large size of the loan portfolio. The KWPCRF balances the leveraging ability with the need to ensure significant funds remain available for financing agreements in the long term, particularly if capitalization grants were to end. In past bond issues, the KWPCRF bonds have received a AAA credit rating – the highest rating available – from Standard & Poor's, Moody's, and Fitch Ratings and the KWPCRF strives to maintain this credit rating through strong financial management.

h. Cross Collateralization

Between the two Kansas SRF bond resolutions and the new indenture of the Kansas SRF programs, there are two methods for cross-collateralization to provide security for bond issues. The Kansas Pubic Water Supply Loan Fund (KPWSLF) originally issued bonds through the Kansas Development Finance Authority (KDFA) Bond Resolution No. 106 and the Kansas Water Pollution Control Revolving Loan Fund (KWPCRLF) originally issued bonds through the KDFA Bond Resolution No. 37. In 2006, Kansas Statutes were amended to allow assets of either fund to be used as revenue to secure payment of principal and interest of the corresponding fund.

The actual mechanism for this cross-collateralization is found in Section 805 of the KPWSLF Bond Resolution and Section 709 of the KWPCRF Bond Resolution (excerpted below). The only funds allowed to be used as revenue for the corresponding program are excess revenue as determined after the annual bond principal payment and these funds can only be used by the corresponding program to prevent a leveraged bond default. Furthermore if any funds are used by the corresponding program they are to be paid back without interest once that program has excess revenues. No debt service coverage levels or reserve accounts from the corresponding program are presented to potential bond holders as security to secure the issue of bonds because there is no guarantee that the other program will be able to provide revenue to the cross-collateralization account or even provide such revenue in a timely manner to prevent a default.

"After all payments and credits required at the time to be made under the provisions of this Section and the preceding Sections, have been made, all moneys remaining in the Principal Account following the final Principal Payment Date in each Fiscal Year shall, subject to the delivery of a Projected Revenue Certificate prepared in accordance with the last sentence of this Section, be paid and credited to the CW Cross-Collateralization Account to the extent necessary to: (a) prevent a monetary default on the CW Leveraged Bonds, or to the extent permitted by the Federal Act and the CW Act, any other CW Bonds; (b) replenish the Bond Reserve Fund for the CW Bonds in accordance with the requirements of the CW Bond Resolution; or (c) make repayments of CW Transferred Deposits, without interest, to the CW Revenue Fund.

All moneys remaining in the Recycled Loan Account following any Payment Date, subject to the delivery of a Projected Revenue Certificate prepared in accordance with in the last sentence of this subsection (d), be paid and credited to the CW Cross-Collateralization Account to the extent necessary to: (i) prevent a monetary default on the CW Leveraged Bonds, or to the extent permitted by the Federal Act and the OW Act, any other CW Bonds; (ii) replenish the Leveraged Reserve Fund for the CW Bonds in accordance with the requirements of the CW Bond Resolution; or (iii) make repayments of CW Transferred Deposits, without interest, to the CW Revenue Fund. To the extent that moneys in the Recycled Loan Account are not paid and credited to the CW Cross-Collateralization Account as set forth above."

The new bond indenture, the Master Financing Indenture (MFI), was established in 2010 by KDFA Bond Resolution No.287 and combines both the KPWSLF and KWPCRF programs as one entity for the purpose of interfacing with the capital market. All bonds issued in 2010 and after will be under the MFI. The entire MFI is structured as a cross collateralization mechanism as all interest revenues are pledged to the State Match bonds and all other revenues are pledged to the Leveraged Bonds.

The MFI interface provides for an easier understanding to bond holders as to how debt service will be paid. However, as indicated in Section 903 of the MFI, the KPWSLF and KWPCRF will maintain and operate the loan programs as separate entities with separate accounting of all loan disbursements, interest revenues, principal revenues, State Match debt service, Leveraged debt service, State Match bond issuance amounts, Leveraged bond issuance amounts, State Match bond proceeds, Leveraged bond proceeds, and any other fund or account established in the MFI.

In the event that cross-collateralization is used to pay debt service on bonds, KDHE accounting will show revenue from one program was needed to pay debt service of the other program. That amount will be treated as a loan (without interest) to be repaid once the borrowing program has available funds in its portion of the Program Equity Fund. In the unlikely event that State Match debt service could not be paid using the corresponding program's portion of interest revenues in the MFI, an amount necessary needed to pay the State Match debt service of the program would be transferred from the corresponding program's Service Fee account to the State Match debt service account (Service Fees are a interest component of the loan repayments). This will assure that the assets of one program are not used, even temporarily, to pay for the other program's State Match.

Furthermore, the MFI will not issue any bonds unless it can show that the program which receives bond proceeds can pay 100% of the debt service of the corresponding bonds (in other words, without using cross-collateralization), reference Section 208 (a) of the MFI.

VI. Program Management

a. Assurances and Specific Proposals

KDHE has provided the necessary assurance and certifications as part of the Operating Agreement with US EPA. The Operating Agreement (OA) describes the mutual obligations between EPA and KDHE, and through the IAA with DOA and KDFA. The purpose of the OA is to provide a framework of procedures to be followed in the management and administration of the KWPCRF. The OA was last updated March 15, 2012. The OA is expected to be updated in 2017 to consider the changes required by WRRDA and the Linked Deposit investment financing of non-point source pollution control efforts.

The OA addresses the commitment of the KWPCRF to key CWSRF requirements, including:

> 602(a) Environmental Reviews: The KWPCRF will conduct environmental reviews according to the State Environmental Review Process developed for the SRF.
>
> 603(b)(3) Binding Commitments: The KWPCRF will enter into binding commitments for 120 percent of each quarterly grant payment within one year of receipt of the payment.
>
> 602(b)(4) Expeditious and Timely Expenditures: The CWSRF has and will continue to expend all funds in the CWSRF in a timely manner.

b. Federal Requirements

Many federal requirements apply to the KWPCRF, and to all projects funded by the KWPCRF, including federal environmental cross-cutters, Davis/Bacon prevailing wages, Disadvantaged Business Enterprise utilization, American Iron and Steel requirements, preparation of a Fiscal Sustainability Plan including an Asset Management Plan, a certification the facility planning considered cost effectiveness, energy efficiency, water use efficiency, and energy and water reuse, and a memo documenting the determination of the “useful life” of the final engineering design (in years). The following additional requirements apply as the “New Equivalency” requirements, but only to certain loan agreements in a total amount equal to the capitalization grant. These requirements are:

- Federal Environmental Crosscutters (including all as presented above)
- Disadvantaged Business Enterprise utilization
- Single Audit Act (OMB A-133)
- Federal Funding Accountability and Transparency Act (FFATA) reporting (completed by KDHE)
- Procurement of A/E services in accordance with the federal Brooks Act (a qualifications based selection process, with subsequent negotiated fees for services)
- Public Notification

In order to minimize the burden on the program administration and in fairness to all borrowers, all loan recipients are required to comply with DBE efforts as well as the federal environmental cross-cutters.

As required for the “New Equivalency” of EPA, regarding the requirements of the Single Audit Act (OMB A-133) the KWPCRF is expected to designate in the Intended Use Plan a project or group of projects equal to the capitalization grant amount that will be required to submit an audit that complies with the Single Audit Act requirements, see the list below. At the time of loan execution, KDHE will determine if such loan will be required to comply with the Single Audit Act. Because it is unknown which projects listed in the IUP will actually execute loan agreements, it is not possible to list specific loans in the IUP. These specific loans will be listed in the annual report.

As required for the “New Equivalency” of EPA, the loans designated to comply with the Single Audit Act will also be designated for reporting under the FFATA. This FFATA reporting is completed by KDHE BOW Municipal Programs.

As required for the “New Equivalency” of EPA, compliance with the Brooks Act for procurement of engineering services as presented in 40 USC Chapter 11 - a qualifications based selection process with subsequent negotiated fees for services - is required for loans that includes any engineering fees, but only to certain loan agreements in a total amount equal to the capitalization grant. This “New Equivalency” requirement does NOT apply to loans that do not include engineering fees. Including even one dollar of engineering or administrative fees in the loan amount invokes this Brooks Act procurement requirement. Any loan that provides funding for construction costs **only** is a qualified “New Equivalency” loan if all other “New Equivalency” program conditions are met by the loan. The project(s) listed below are designated to also comply with all other “New Equivalency” requirements listed above.

At this time and tentatively, the KWPCRF program has selected 2 project(s) to comply with the EPA “New Equivalency” requirements at Hays and Junction City Ph 1, and KDHE will also report only this 2 project(s) for FFATA reporting. This results in a total $41,354,000 to be reported under these requirements, somewhat higher than the capitalization grant amount of $12,060,000.

Community Name	Project Description	Financing Amount
Hays, Kansas	WWTP Upgrade and Expansion	$30,260,000
Junction City, Kansas	WWTP Upgrade and Rehabilitation, Phase 1	$11,094,000
TOTAL		$41,354,000

All KWPCRF assistance recipients identified will:

- Demonstrate compliance with the federal environmental crosscutting authorities during the environmental review and project planning stage.
- Follow the EPA Office of Small Business Programs guidelines for encouraging disadvantaged businesses to participate during the bidding process.
- Comply with the guidance and requirements set forth for the 2014 American Iron and Steel (AIS) EPA policies and procedures (see Appendix L). (Applies to only projects for “treatment works”.)

- Prepare a Fiscal Sustainability Plan including an Asset Management Plan Submitted for Approval Prior to Completion of Construction (see Appendix E.) (Applies to any projects which repair, replace, or expand "treatment works".)

- Certify the Facility Planning Considered Cost Effectiveness, Water Use, Reuse, Recapture, and Conservation, and Energy Conservation

The selected equivalency KWPCRF assistance recipients listed in the Annual Report will also:

- Be the project(s) reported under the Federal Funding Accountability and Transparency Act (FFATA).

- Submit Single Audit reports in all years when disbursements of federal funds (both non-CWSRF federal funds and CWSRF designated project(s) during the active phases of the loan project) are greater than $500,000, as required by OMB Circular A-133. (OMB has recently published new rules regarding A-133 Audits, and the threshold is now federal funds greater than $750,000 for non-Federal entities with Fiscal Years beginning on or after December 26, 2014. This would be FY 2015 for most loan recipients as the fiscal year is the calendar year, and would be SFY 2015 for the State of Kansas.)

- Comply with the KWPCRF requirements for procurement of A/E services in accordance with the federal Brooks Act requirements

- Complete public notification

The project applicant(s) have been informed of the requirements, and the requirements are included as Conditions within the Loan Agreements. The KWPCRF will be maintaining records of project compliance in the project files.

c. Davis-Bacon Wage Rates

EPA's FFY2012 Appropriations bill and also the recent WRRDA law require the application of Davis-Bacon prevailing wage rates to all treatment works projects funded in whole or in part by the CWSRF into the future. The Davis-Bacon requirements do not apply to nonpoint source or decentralized wastewater treatment projects unless they are considered "treatment works". Davis-Bacon applies to any construction contracts with over $2,000 of labor costs and their subcontractors regardless of the subcontract amount.

To ensure compliance with these requirements, KDHE in administering the KWPCRF will confirm that the correct wage determinations are being included in the bid specifications and construction contracts. KDHE in administering the KWPCRF will also provide assistance recipients with the specific EPA Davis-Bacon contract language as conditions within the Loan Agreements that are to be included in bid specifications and construction contracts. In addition, KDHE in administering the KWPCRF will collect Certifications of Davis-Bacon compliance from assistance recipients with disbursement requests.

d. Audits and Reporting

The KWPCRF is committed to transparency and accountability. To that end, program information such as the Independent Financial Audit, KWPCRF application packet, Intended Use Plan, Annual Reports, GPR project summaries, and other program materials are posted on the KDHE website: www.kdheks.gov/muni/index.htm .

An independent financial audit of the KWPCRF is conducted by an outside CPA firm annually.

Project milestones and information are reported through EPA's Clean Water Benefits Reporting (CBR) database. The KWPCRF commits to entering benefits information on all projects into the CBR by the end of the quarter in which the assistance agreement is signed.

VII. Public Review and Comment

A public hearing was held to receive comments on this KWPCRF Draft IUP for SFY2017. The hearing was held in the KDHE offices at the Curtis State Office Building, 1000 SW Jackson Street, Topeka, Kansas, on May 25, 2016, at 10 am in the Azure Conference Room. The hearing was advertised in the Kansas Register, on the KDHE website, and through a mass mailing to all interested parties. The public comment period remained open for a short period following the public hearing.

Appendix G of this Final 2017 IUP contains the following:

- Public Hearing Notice
- Summary of the public hearing
- List of Public Hearing Attendees
- Summary of Email and Letter Comments Received and Responses Provided

APPENDIX A

Figure 1: List of Projects to be Funded SFY2017

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
NA	Cherokee, Kansas* (Applied for 2016 funding)	0081230	I	This project (C20 1470 01) would upgrade and rehabilitate the wastewater treatment lagoon.	$315,100	Est. <3.0%	20	$0	Fix It First Project	NA City has also received for CDBG funding	None	NA	NA	Q3 SFY 2016
NA	Cheney, Kansas* (Funded in 2015)	0094226	IVB	This project would rehabilitate a portion of the wastewater collection system.	$649,000	2.41%	20	$0	Fix It First Project	NA	None	NA	NA	Q2 SFY 2015
NA	Clyde, Kansas* (Funded in 2016)	0022365	I	This project would upgrade the wastewater treatment lagoon.	$252,000	Est. <3.0%	20	$0	NA	NA City has also applied for CDBG funding	NA	NA	NA	Q3 SFY 2016
NA	Collyer, Kansas* (Funded in 2016)	NA-NQ Lagoon	I & IVB	This project would upgrade and rehabilitate the wastewater treatment lagoon and replace a sewage pumping station.	$468,597	Est. <3.0%	20	$0	Fix It First Project	NA City has also applied for CDBG funding	None	NA	NA	Q3 SFY 2016
NA	Colony, Kansas* Ph. 3 (Funded in 2016)	0116122	IVB	This project would rehabilitate a portion of the wastewater collection system.	$307,000	Est. <3.0%	20	$0	Fix It First Project	NA City has also received for CDBG funding	None	NA	NA	Q3 SFY 2016
NA	Frontenac, Kansas* (Funded in 2016)	0026131	IVB	This project would upgrade existing sewage pumping stations and the gravity collection system.	$1,200,000	2.18%	20	$0	Fix It First Project	NA	None	NA	NA	Q3 SFY 2016
NA	Hays, Kansas (Funded in 2016)	0036684	I & II	This project would upgrade the wwt system to provide nutrient removal.	$30,260,000	2.27%	20	$0	NA	NA	Potential Project $2,000,000	NA	NA	Q2 SFY 2016
NA	Hoisington, Kansas* (Funded in 2016)	0022454	I	This project would upgrade and rehabilitate the wastewater treatment lagoon.	$798,040	2.26%	20	$0	Fix It First Project	NA City has also received for CDBG funding	None	NA	NA	Q2 SFY 2016

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
NA	Johnson County, Kansas – Lake Gardner (Amendment #3) (Funded in 2016)	0119296	IVA	This project will construct a grinder pump-low pressure system collector sewer to serve existing unsewered homes around Lake Gardner in southern Johnson County. A Major Amendment to the Loan Agreement is provided to increase funding to the project.	Additional $2,573,893	2.42%	20	$2,158,349	NA	NA	$2,158,349	Env. Innov.	No	Q1 SFY 2016
NA	Junction City, Kansas – Phase 1 (Funded in 2016)	0034011	I & II	This project would rehabilitate and upgrade the wwt processes to provide nutrient removal.	$11,094,000	2.27%	20	$0	Fix It First Project	NA	None	NA	NA	Q2 SFY 2016
NA	Liberal, Kansas – Phase 2 (Funded in 2016)	0080870	I, II, & IVB	This project would finance the construction costs to upgrade the wwt processes to provide nutrient removal and construct new interceptors.	$26,643,080	2.11%	20	$0	NA	NA	Potential Project $1,000,000	Energy Eff.	Yes	Q4 SFY 2015
NA	McPherson. Kansas (Funded in 2015)	0036196	I & IVB	This project would rehabilitate the existing collection system and wwt plant.	$4,863,464	2.13%	20	$0	Fix It First Project	NA	None	NA	NA	Q3 SRF 2015
NA	Osage City, Kansas* (Applied for 2016 Funding)	0022675	I & IIIA	This project would provide comprehensive sewer rehabilitation to a portion of the collection system to eliminate sanitary sewer overflows, and provide a minor upgrade to the existing wwt lagoon as required by the EPA administrative order to the city.	$595,000	Est. <3.0%	20	$0	Fix It First Project	NA City has also received CDBG funding	None	NA	NA	Q4 SFY 2016
NA	Tescott, Kansas* (Funded in 2015)	0025691	IIIB	This project would replace the existing sewage pumping station.	$150,980	2.13%	20	$0	Fix It First Project	NA	None	NA	NA	Q4 SFY 2015
NA	Westmorland, Kansas* (Applied for 2016 Funding)	0046485	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$438,950	Est. <3.0%	20	$0	Fix It First Project	NA City has also applied for CDBG funding	None	NA	NA	Q3 SFY 2016
NA	Williamsburg, Kansas* (Funded in 2016)	0093203	IIIA	This project would provide comprehensive sewer rehabilitation of the collection system to eliminate sanitary sewer overflows as required by the schedule of compliance in the NPDES permit issued to the city.	$1,000,000	Est. <3.0%	20	$0	Fix It First Project	NA City has also received CDBG funding	NA	NA	NA	Q3 SFY 2016

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
1	Concordia, Kansas – Ph. 1 (Can apply for 2016 Funding)	0025577	I	This Phase 1 project would rehabilitate and the wwt processes, Phase 2 would provide nutrient removal improvements.	$2,000,000	Est. <3.0%	20	$0	Fix It First Project	NA	Potential Project $500,000	Energy Eff.	NA	Q4 SFY 2016
2	Conway Springs, Kansas* (Can apply for 2016 Funding)	0030651	IIIB	This project would rehabilitate a portion of the wastewater collection system, sewage pumping stations, and wastewater treatment lagoons.	$3,000,000	Est. <3.0%	20	$0	NA	NA	NA	NA	NA	Q4 SFY 2017
3	Emporia, Kansas (Can apply for 2016 Funding)	0046728	I, II	This project would rehabilitate and upgrade the wwt processes to provide nutrient removal.	$22,000,000	Est. <3.0%	20	$0	NA	NA	Potential Project $2,000,000	Energy Eff.	NA	Q4 SFY 2016
4	Enterprise, Kansas* (Can apply for 2016 Funding)	0027502	I	This project would provide a new wwt lagoon.	$1,731,031	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q1 SFY 2017
5	Galva, Kansas* (Can apply for 2016 funding)	0022560	I	This project would upgrade the wastewater treatment lagoon.	$800,000	Est. <3.0%	20	$0	Fix It First Project	NA	NA	NA	NA	Q2 SFY 2017
6	Grandview Plaza, Kansas* (Can apply for 2016 Funding)	0116521	I	This project would upgrade and rehabilitate the wastewater treatment lagoon.	$500,000	Est. <3.0%	20	$0	NA	NA	Potential Project $500,000	Ww Eff Reuse	NA	Q4 SFY 2017
7	Haven, Kansas* (Can apply for 2016 Funding.)	0116815	IVB	This project would upgrade the existing sewage pumping stations in the collection system.	$200,000	Est. <3.0%	20	$0	Fix It First Project	NA	NA	NA	NA	Q4 SFY 2017
8	Havensville, Kansas* (Can apply for 2016 Funding)	0081523	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$100,000	Est, <3.0%		$0	Fix It First Project	NA	NA	NA	NA	Q4 SFY 2017
9	Horton, Kansas* (Can apply for 2016 Funding)	0047465	I	This project would replace the existing wwtp.	$3,500,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q1 SFY 2018.
10	Jeff. Co. SD #5 (Hic. Acres)	NA-NQ Lagoon	IIIB	This project would replace the gravity collection system with a grinder pump/low pressure collection system.	$734,650	Est. <3.0%	20	$0	Fix It First Project	Potential Project	Potential Project $734,650	Cost Effective I/I Corr/Cont	Needed	Q1 SFY 2017

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
11	Louisburg, Kansas* (Can apply for 2016 funding)	0024856, 0087149	I	This project would upgrade or replace the existing wwt lagoon systems – North and South.	$16,500,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q2 SFY 2017
12	Lyndon, Kansas* (Can apply for 2016 Funding)	0024821	I	This project would replace the existing wwtp with a lagoon treatment facility.	$3,150,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q2 SFY 2017
13	Maize, Kansas (Can apply for 2016 Funding)	0092258	I, II	Rehabilitate and expand the BNR activated sludge wwt plant.	$6,110,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q4 SFY 2016
14	Moscow, Kansas* (Can apply for 2016 Funding)	NA-NQ Lagoon	I	This project would rehabilitate and upgrade the existing wwt lagoon system.	$491,344	Est. <3.0%	20	$0	Fix It First Project	NA City has also applied for CDBG funding	None	NA	NA	Q4 SFY 2016
15	Moundridge, Kansas*(Can apply for 2016 Funding)	0021008	I	This project would rehabilitate and upgrade the existing wwt lagoon system.	$800,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q3 SFY 2017
16	Reno Co S. D.'s, Kansas* (Can apply for 2016 Funding)	0091715	I	This project would rehabilitate and upgrade the existing wwt lagoon system.	$901,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q2 SFY 2017
17	Riley, Kansas* (Can apply for 2016 Funding)	0093301	I	This project would upgrade and expand the existing wwt lagoon system.	$600,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	Q4 SFY 2017
18	Sabetha, Kansas* (Can apply for 2016 Funding)	0096245	IIIB	This project would provide comprehensive city-wide sewer rehabilitation.	$2,000,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q4 SFY 2016.
19	Schoenchen, Kansas* (Can apply and receive funding at any time)	NA–NQ Lagoon	I	This project would rehabilitate the existing wwt lagoon system.	$100,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q1 SFY 2017.
20	Seneca, Kansas* (Can apply for funding at any time)	0047538	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$2,231,391	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q1 SRF 2017.

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
21	Syracuse, Kansas* (Can apply for 2016 Funding)	NA–NQ Lagoon	I	This project would rehabilitate the existing non-discharging with irrigation wwt lagoon.	$500,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q4 SFY 2017
22	Topeka, Kansas (Can apply for 2016 Funding)	0042722	V	Topeka is completing various combined sewer correction/control projects in the Combined Sewer System portion of the collection system. This project would continue those efforts.	$5,500,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q4 SFY 2017
23	Ulysses, Kansas* (Can apply for 2016 Funding)	0098825	I&X	This project would upgrade and rehabilitate the existing wwt lagoon and effluent irrigation system.	$500,000	Est. <3.0%	20	$0	NA	NA	Potential Project $500,000	Water Reuse	NA	Q2 SFY 2018
24	Wetmore, Kansas* (Can apply for 2016 Funding)	0099431	IIIB	This project would provide comprehensive city-wide sewer rehabilitation.	$2,000,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q4 SFY 2017
25	Woodson Co. I.D. #2 – Piqua* (Can apply for 2016 Funding)	0084085	I & IIIB	This project would rehabilitate the existing collection system and wwt lagoon.	$80,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	Q2 SFY 2017
26	Arkansas City, Kansas (Can apply and receive funding at any time)	0044831	I	This project would provide a SCADA system for the WWTP.	$300,000	Est <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
27	Augusta, Kansas (Can apply for and receive funding at any time)	0094561	IVB	This project would rehabilitate and upsize certain sewer lines.	$3,500,000	Est <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
28	Baxter Springs, Kansas* - Phase 2 (Can apply and receive funding at any time)	0045934	II	This project would upgrade the wwt system to provide nutrient removal.	$700,000	Est. <3.0%	20	$0	NA	NA City may also apply for CDBG funding	None	NA	NA	To be determined.

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
29	Concordia, Kansas – Ph. 2 (Can apply and receive funding at any time)	0025577	II	This Phase 2 project would provide nutrient removal improvements.	$4,000,000	Est. <3.0%	20	$0	NA	NA	Potential Project $500,000	Energy Eff.	NA	To be determined.
30	Coolidge, Kansas* (Can apply and receive funding at any time)	NA–NQ Lagoon	I	This project would rehabilitate the existing non-discharging wwt lagoon.	$400,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
31	Dodge City, Kansas (Can apply for an amendment at any time)	NA-NQ Lagoon	I	This project at the South WWTP would treat and recycle biogas.	$10,000,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
32	Eudora, Kansas* (Can apply and receive funding at any time)	0094609	IVB	This project would upgrade an existing sewage pumping station in the collection system.	$800,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
33	Galena, Kansas* (Can apply and receive funding at any time)	0048135	IVA	This project would extend sewers to unsewered areas.	$2,000,000	Est. <3.0%	20	$0	NA	NA City may also apply for CDBG funding	None	NA	NA	To be determined.
34	Goessel, Kansas* (Can apply and receive funding at any time)	0081060	I	This project would rehabilitate and upgrade the existing wwt lagoon system.	$100,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
35	Humboldt, Kansas* (Can apply and receive funding at any time)	0022632	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$2,000,000	Est. <3.0%	20	$0	Fix It First Project	Potential Project, City may also apply for CDBG and RD funding	Potential Project $2,000,000	Cost Effective I/I Corr/Cont	Needed	To be determined
36	Junction City, Kansas – Phase 2 (Can apply and receive funding at any time)	0034011	I & II	This project would rehabilitate and upgrade the wwt processes to provide nutrient removal. Ph. 2 - $14.9 M Ph. 3 - $11.3 M	$26,200,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
37	Lansing, Kansas – Relief 5 (Can apply and receive funding at any time)	0081647	IVB	This project would rehabilitate and upsize certain sewer lines.	$670,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
38	Lansing, Kansas – Relief 6A (Can apply and receive funding at any time)	0097535	IVB	This project would rehabilitate and upsize certain sewer lines.	$3,300,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
39	Long Island, Kansas* (Can apply and receive funding at any time)	NA–NQ Lagoon	I	This project would rehabilitate the existing wwt lagoon system.	$200,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
40	Ottawa, Kansas – NE Int. & PS (Can apply and receive funding at any time)	0097535	IVB	This project would construct a new Northeast Interceptor sewer and replace an existing sewage pumping station.	$2,000,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
41	Russell, Kansas* (Can apply and receive funding at any time)	0091367	!	This project would rehabilitate and upgrade the existing wwt lagoon system.	$300,000	Est. <3.0%	20	$0	NA	NA	None	NA	NA	To be determined.
42	Schoenchen, Kansas* (Can apply and receive funding at any time)	NA–NQ Lagoon	I	This project would rehabilitate the existing wwt lagoon system.	$100,000	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
43	Seneca, Kansas* (Can apply for funding at any time)	0047538	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$2,231,391	Est. <3.0%	20	$0	Fix It First Project	NA	None	NA	NA	To be determined.
44	Spring Hill, Kansas (Can apply and receive funding at any time)	0095516	IIIB	This project would rehabilitate a portion of the wastewater collection system.	$563,000	Est. <3.0%	20	$0	Fix It First	NA	None	NA	NA	To be determined.

I.D. No.	Community Name/Project Sponsor *	NPDES Permit No.	Needs Category **	Project Description	Total Assistance	Interest Rate	Term	Additional Subsidy			Green Project Reserve			Estimated binding commitment date
								Principal Forgiveness Amount	Sustainability Policy	Disadvantaged Community/ Affordability Review	Amount	Category	Business Case Project?	
45	Wakefield, Kansas* (Can apply and receive funding at any time)	0027545	IIIB	This project would rehabilitate a portion of the wastewater collection system, sewage pumping stations, and wastewater treatment lagoons.	$250,000	Est. <3.0%	20	$0	Fix It First	NA	None	NA	NA	To be determined

Total Projects 1 thru 25 **$76,029,416** **$0** **$4,234,650**
FFY 2016 Capitalization Grant $12,060,000 0% 5.57%

* City Less Than 5.000 Population

** Needs Category

I. Secondary Wastewater Treatment
II. Advanced Wastewater Treatment
III-A. Infiltration/Inflow Correction
III-B. Sewer Replacement/Rehabilitation
IV-A. New Collector Sewers and Appurtenances
IV-B. New Interceptors Sewer and Appurtenances
V. Combined Sewer Overflow (CSO) Correction
VI. Stormwater Management Programs
VI-A. Stormwater Conveyance Infrastructure
VI-B. Stormwater Treatment Systems
VI-C. Green Infrastructure
VI-D. General Stormwater Management
VII. Nonpoint Source (NPS) Control
VII-A NPS Control: Agriculture (Cropland)
VII-B. NPS Control: Agriculture (Animals)
VII-C. NPS Control: Silviculture
VII-E. NPS Control: Ground Water Protection
VII-F. NPS Control: Marinas
VII-G. NPS Control: Resource Extraction
VII-H. NPS Control: Brownfields
VII-I. NPS Control: Storage Tanks
VII-J. NPS Control: Sanitary Landfills
VII-K. NPS Control: Hydromodification
VII-M. NPS Control: Other Estuary Management Activities
X. Recycled Water Distribution
XII. Decentralized Wastewater Treatment Systems

APPENDIX B

Proposed FFY 2016 Cap Grant
Payment Schedule
(Increases in ACH Ceiling)

Quarter - FFY	Month/Yr.	Administration	Project	Total
4rd - 2016	July 2015	482,400	11,577,600	12,060,000
Totals		482,400	11,577,600	12,060,000

APPENDIX C

STATE OF KANSAS
WATER POLLUTION CONTROL REVOLVING LOAN FUND
ESTIMATED SFY 2017 SOURCES AND USES OF FUNDS

	Estimated as of April 28, 2016
SOURCES	
EPA FFY 2016 Capitalization Grant	12,060,000.00
(Including Adm. Funds 603(d)(7) $482,400 Banked)	(see below)
2016 State Match (total needed $2,412,000*)	
(Less FFY 2016 State Match Previously Spent of $2,412,000)	0.00
Repayment Funds Available as of 4/7/16 (includes actual funds released March 2016)	6,400,000.00
SFY 2017 Excess revenues** (Est. from the December 2015 PRC)	29,180,000.00
SFY 2017 Est. Interest earnings (cash, reserves, and investments)	260,000.00
Banked Adm. Funds 603(d)(7)	375,000.00
Banked Service Fees***	1,125,000.00
Future Sale of Leverage Bonds**** (Est. in late SFY 2017)	26,698,025.00
TOTAL SOURCES	76,098,025.00

USES	
Projects on SFY 2017 IUP****	74,598,025.00
Administrative Expenses Est SFY 2017 603(d)(7) (same as above)	375,000.00
Service Fees Est SFY 2017 (same as above)***	1,125,000.00
TOTAL USES	76,098,025.00

Footnotes on following page

*The $2,412,000 amount was previously provided and utilized for payments to projects.

**Excess revenues are the amount of repayments from prior Loan Agreements left after all State Match and Leveraging principal and interest bond repayments are made for the state fiscal year, and the Projected Revenues Certificate has been prepared and certified by the Financial Advisor and is acceptable to the Trustee for the KWPCRF and KPWSRF programs as required by the Master Financing Indenture. The excess revenues are released back to the KWPCRF to use in new loan agreements once per year.

***Additional information regarding service fees collection and use is provided in Appendix H.

****This amount includes only Project Nos. 1 through 25 from Appendix A and does not include the Amendment to Johnson County – Lake Gardner, the current year projects targeted to be funded.

Appendix D

EPA email – Final Availability of FY 2016 Clean Water Act Title VI Funds – March 1, 2016 (3pp)

Subject: FW: 2016 CWSRF Allotments - Estimates
Attachments: FY 2016 CWSRF Allotments 2_1_16.pdf

From: Germano, Sabre [mailto:Germano.Sabre@epa.gov]
Sent: Friday, April 01, 2016 2:29 PM
To: Eric Crawford <eric.crawford@dnr.mo.gov>; james.oppelt@dnr.iowa.gov; Jennifer Bunton <jennifer.bunton@dnr.iowa.gov>; Kevin Stoner <kevin.j.stoner@nebraska.gov>; Lori Beary <Lori.beary@iowa.gov>; Mark Moeller <Mark.moeller@dnr.iowa.gov>; Marty Link <marty.link@nebraska.gov>; Patti Cale-Finnegan <patti.cale-finnegan@dnr.iowa.gov>; Rod Geisler <rgeisler@kdheks.gov>; satya.chennupati@dnr.iowa.gov; Steve McNulty <steve.mcnulty@nebraska.gov>; Tracy Scebold <Tracy.scebold@iowa.gov>; William Carr <WCarr@kdheks.gov>
Cc: Curtis, Glenn <curtis.glenn@epa.gov>; Healy, Nancy <Healy.Nancy@epa.gov>; Simmons, Christopher <simmons.christopher@epa.gov>; Nix, Tanya <nix.tanya@epa.gov>; Beard-Tittone, Kelly <Beard-Tittone.Kelly@epa.gov>
Subject: FW: 2016 CWSRF Allotments - Estimates

Good afternoon. Sharing the ***estimates*** for 2016 CWSRF Allotments. I do not believe we have shared until now.

In Mark Mylin's subsequent follow-up to us on status, and also as discussed at last week's Spring CIFA in DC, we are still awaiting final confirmation from OCFO. We continue to stress the importance that we need final assurances so that the states can move forward with their awards. We will keep you updated if we learn anything new.

Thanks!

Sabre Germano
Water, Wetlands, and Pesticides Division
Waste Water & Infrastructure Management Branch
EPA Region 7
11201 Renner Boulevard
Lenexa, KS 66219
913-551-7026

From: Mylin, Mark
Sent: Monday, February 01, 2016 11:27 AM
To: Allenbach, Becky <Allenbach.Becky@epa.gov>; AMARIS, JOSH <AMARIS.JOSH@EPA.GOV>; Bakker, Gerry <bakker.gerry@epa.gov>; Baltazar, Debbie <baltazar.debbie@epa.gov>; Berig, Jennifer <Berig.Jennifer@epa.gov>; Bielanski, Andrew <bielanski.andrew@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Bourne, James <Bourne.James@epa.gov>; Camacho, Ruben <Camacho.Ruben@epa.gov>; Chominski, Robert <Chominski.Robert@epa.gov>; Chong, Nancy <Chong.Nancy@epa.gov>; Cossa, Laura <cossa.laura@epa.gov>; Cunningham, Magdalene <Cunningham.Magdalene@epa.gov>; Curtis, Glenn <curtis.glenn@epa.gov>; DAgostino, Daniel <DAgostino.Daniel@epa.gov>; Eberhardt, Doug <Eberhardt.Doug@epa.gov>; Friel, Brian <Friel.Brian@epa.gov>; Gallo, Vince <Gallo.Vince@epa.gov>; Geliga, Jaime <Geliga.Jaime@epa.gov>; Germano, Sabre <Germano.Sabre@epa.gov>; Hammett, Stephanie <Hammett.Stephanie@epa.gov>; Healy, Nancy <Healy.Nancy@epa.gov>; Howard, AshleyA <Howard.AshleyA@epa.gov>; Laguer, Yasmin <Laguer.Yasmin@epa.gov>; Lausted, Andrew <lausted.andrew@epa.gov>; Leu, Jane

<Leu.Jane@epa.gov>; Licata, Juanita <Licata.Juanita@epa.gov>; Marquardt, Steve <marquardt.steve@epa.gov>; Marrese, Katherine <Marrese.Katie@epa.gov>; Parsons, Sheryl <Parsons.Sheryl@epa.gov>; Polanco, Susan <Polanco.Susan@epa.gov>; Rawls, Maurice <Rawls.Maurice@epa.gov>; Simmons, Christopher <simmons.christopher@epa.gov>; Spinale, Mark <Spinale.Mark@epa.gov>; Tucker, Michelle <Tucker.Michelle@epa.gov>; Varnado, Miriam <Varnado.Miriam@epa.gov>; Vida, Stephen <Vida.Stephen@epa.gov>; R9_SRF <R9_SRF@epa.gov>; Jennings, Marie <Jennings.Marie@epa.gov>; Ruiz, Lea <ruiz.lea@epa.gov>
Cc: Chamberlain, Nick <Chamberlain.Nick@epa.gov>; Ames, George <Ames.George@epa.gov>; King, Matt <King.Matt@epa.gov>; Platt, Sheila <Platt.Sheila@epa.gov>; Tucker, Kelly <Tucker.Kelly@epa.gov>; Goralczyk, Michael <Goralczyk.Michael@epa.gov>; Kochman, Miriam <Kochman.Miriam@epa.gov>
Subject: 2016 CWSRF Allotments

Colleagues,

Attached are the FY 2016 CWSRF Allotments based on the amount of $1,381,210,000, which is what remains of the FY 2016 appropriated amount of $1,393,887,000 after accounting for the rescission of $12,677,000.

While we are still waiting for confirmation from OCFO that these amounts are final, we do not expect that there will be any changes to the amounts provided to you today.

We are still working with OGC on the additional subsidization grant condition to properly account for the fact that there is both appropriation and WRRDA language that must be combined. We will follow-up and send out the FY 2016 capitalization grant terms and conditions as soon as we can. We will also send out an accompanying table showing the required GPR and additional subsidization amounts at that time.

Please feel free to contact me if you have any questions.

- Mark

Mark Mylin
Program Analyst
USEPA HQ
CWSRF Program
1201 Constitution Avenue, 4204M
Washington, DC 20001
(202) 564-0607

FY 2016 CWSRF Allotments: $1,381,210,000
($1,393,887,000 Appropriation with a $12,677,000 Rescission)

	Title VI State Allotment	604(b) Allotment	Allotment Less 604(b)
Region 1	**101,976,000**	**1,062,000**	**100,914,000**
Connecticut	16,534,000	165,000	16,369,000
Maine	10,447,000	104,000	10,343,000
Massachusetts	45,821,000	458,000	45,363,000
New Hampshire	13,487,000	135,000	13,352,000
Rhode Island	9,062,000	100,000	8,962,000
Vermont	6,625,000	100,000	6,525,000
Region 2	**225,970,000**	**2,318,000**	**223,652,000**
New Jersey	55,150,000	552,000	54,598,000
New York	148,969,000	1,490,000	147,479,000
Puerto Rico	17,602,000	176,000	17,426,000
Virgin Islands	4,249,000	100,000	4,149,000
Region 3	**148,010,000**	**1,547,000**	**146,463,000**
Delaware	6,625,000	100,000	6,525,000
District of Columbia	6,625,000	100,000	6,525,000
Maryland	32,641,000	326,000	32,315,000
Pennsylvania	53,460,000	535,000	52,925,000
Virginia	27,620,000	276,000	27,344,000
West Virginia	21,039,000	210,000	20,829,000
Region 4	**170,590,000**	**1,707,000**	**168,883,000**
Alabama	15,091,000	151,000	14,940,000
Florida	45,556,000	456,000	45,100,000
Georgia	22,819,000	228,000	22,591,000
Kentucky	17,177,000	172,000	17,005,000
Mississippi	12,159,000	122,000	12,037,000
North Carolina	24,357,000	244,000	24,113,000
South Carolina	13,826,000	138,000	13,688,000
Tennessee	19,605,000	196,000	19,409,000
Region 5	**288,862,000**	**2,888,000**	**285,974,000**
Illinois	61,038,000	610,000	60,428,000
Indiana	32,525,000	325,000	32,200,000
Michigan	58,030,000	580,000	57,450,000
Minnesota	24,806,000	248,000	24,558,000
Ohio	75,977,000	760,000	75,217,000
Wisconsin	36,486,000	365,000	36,121,000
Region 6	**102,879,000**	**1,074,000**	**101,805,000**
Arkansas	8,829,000	100,000	8,729,000
Louisiana	14,836,000	148,000	14,688,000
New Mexico	6,625,000	100,000	6,525,000
Oklahoma	10,904,000	109,000	10,795,000
Texas	61,685,000	617,000	61,068,000
Region 7	**74,764,000**	**779,000**	**73,985,000**
Iowa	18,266,000	183,000	18,083,000
Kansas	12,182,000	122,000	12,060,000
Missouri	37,413,000	374,000	37,039,000
Nebraska	6,903,000	100,000	6,803,000
Region 8	**44,406,000**	**608,000**	**43,798,000**
Colorado	10,795,000	108,000	10,687,000
Montana	6,625,000	100,000	6,525,000
North Dakota	6,625,000	100,000	6,525,000
South Dakota	6,625,000	100,000	6,525,000
Utah	7,111,000	100,000	7,011,000
Wyoming	6,625,000	100,000	6,525,000
Region 9	**138,735,000**	**1,570,000**	**137,165,000**
American Samoa	7,320,000	100,000	7,220,000
Arizona	9,115,000	100,000	9,015,000
California	96,523,000	965,000	95,558,000
Guam	5,297,000	100,000	5,197,000
Hawaii	10,453,000	105,000	10,348,000
Nevada	6,625,000	100,000	6,525,000
Northern Marianas	3,402,000	100,000	3,302,000
Pacific Trust Territories	0	0	0
Region 10	**53,418,000**	**587,000**	**52,831,000**
Alaska	8,077,000	100,000	7,977,000
Idaho	6,625,000	100,000	6,525,000
Oregon	15,246,000	152,000	15,094,000
Washington	23,470,000	235,000	23,235,000
State Totals	**1,349,610,000**	**14,140,000**	**1,335,470,000**
Indian Tribes	30,000,000		
American Iron and Steel M & O	1,600,000		
Total All Funds	**1,381,210,000**		

Important Note: The EPA has reserved $1.6 Million for American Iron and Steel Management & Oversight (M & O).

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Appendix E

EPA MEMOs of Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2016 and 2015 Appropriations Affecting the Clean Water (CWSRF) and Drinking Water Revolving Fund (DWSRF) Programs

This "DRAFT Intended Use Plan for the Kansas Water Pollution Control Revolving Loan Program – State Fiscal Year 2017" includes all prior and the new guidance applicable to the FFY 2016 funding, and administration of the KWPCRF low interest loan program will be provided in accordance with these program requirements.

The following EPA MEMOs are applicable to FFY 2016 funding provided by the KWPCRF –

EPA has provided a procedures guidance document applicable to the FFY 2016 CW SRF funding as required by the WRRDA law – "Final Interpretative Guidance for Amendments to the CWSRF Program (includes 602(b)(13) and Q&As)" – copy included in Appendix M of this IUP.

Information and EPA guidance is also included regarding the American Iron and Steel Requirement in Appendix L of this IUP.

The FFY -2016 and FFY -2015 CWSRF Programmatic Terms and Conditions are included here.

As the KWPCRF continues to spend federal funds from the FFY 2015 funding provided to the KWPCRF, the EPA Memo related to the FFY 2015 funding and all attachments also continue to apply to the KWPCRF, and are included in this Appendix E.

Also, the "Green Project Reserve" policy guidance memo from the FFY 2012 program guidance continues to be applicable to both the FFY 2015 and FFY 2016 federal funding, and so the Green Project Reserve policy memo is also included here. EPA has also issued a new CWSRF Green Infrastructure Policy memo dated FINAL 1-6-16 which is included in Appendix F.

The KDHE Final document for a "Fiscal Sustainability Plan including an Asset Management Plan" is included for use by loan recipients, and can also be found on the KDHE website http://www.kdheks.gov/muni/index.htm .

Subject: FW: 2016 CWSRF Cap Grant Conditions & Additional Subsidy
Attachments: 2016 CWSRF Streamlined Grant Conditions.docx

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Subject: 2016 CWSRF Cap Grant Conditions & Additional Subsidy

Good afternoon everyone.

See the attached for the 2016 programmatic T&Cs for the FY 2016 CWSRF cap grants. You will notice a change in the additional subsidy condition. States should be cautioned to be careful if they use or mix the 10% and 30% subsidies since the rules on who can receive the additional subsidy is different. Below is a summary on why and how things can work differently in '16 with the additive provision.

FY 2016 Additional Subsidy

Based upon information received from OGC, it does not appear that Congress intended for the additional subsidy provision in the FY 2016 appropriation to supersede the provision in WRRDA. Therefore, the two provisions can be read together to allow both the FY 2016 appropriation additional subsidy provision and the WRRDA provision to apply to the CWSRF program.

FY 2016 Appropriation:

Provided further, that 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants……shall be used by the State to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), and shall be so used by the State only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred on or after the date of enactment of the Act.

WRRDA:

Under WRRDA, a state may provide additional subsidy of up to 30% (if the total appropriation is over $1.3 billion, which it is in 2016) of an amount equal to a particular year's cap grant to recipients that meet a state's affordability criteria or for projects that meet other criteria or projects which focus on efficiency and sustainability. In addition, additional subsidy can only go to municipal or intermunicipal, interstate, or State agencies.

We do not have the final allotments for 2016 CWSRF. We will send this information out as soon as it becomes available.

Thanks!

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FFY -2016 CWSRF Programmatic Terms and Conditions

1. Payment Schedule
The recipient agrees to accept grant funds that will be released by EPA utilizing the ASAP payment method. Access to these funds will be in accordance with the following schedule:

Each Region seems to follow its own format for this schedule. This format is provided as a suggestion only. Grants offices have sometimes had difficulty transferring an insert table from an FR to an Award document in IGMS–a list like this might be better easier.

Payment Quarter	Payment Date	Payment Amount
FFY-2016/Quarter -2	3/1/2016	$
FFY2016/Quarter - 3	6/1/2016	$

2. State Match
The recipient agrees to deposit into its State Revolving Fund (SRF) a match equal to at least 20 percent of the amount awarded in the capitalization grant.

3. Intended Use Plan and Operating Agreement
The entire contents of the SFY 2017 Intended Use Plan (IUP) and the Operating Agreement (OA) are incorporated hereto by reference and made a part of this Assistance Agreement.

4. Travel
EPA approves the use of Federal funds for travel budgeted in capitalization grants for implementing the CWSRF program. The recipient agrees to use CWSRF funds to participate in training and professional development activities integral to the effective implementation and management of the CWSRF program.

5. Clean Water National Information Management System (CWNIMS)
The recipient agrees to input data, as required by EPA, into the CWNIMS. EPA agrees to provide technical assistance to the State in its use of the CWNIMS as a management information system.

6. Environmental Benefits Reporting
The recipient of funds for the State Revolving Funds (SRF) from the Consolidated Appropriations Act, 2016, P.L. 114--113 agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA), and to report all uses of the funds no less than quarterly, as the Environmental Protection Agency specifies for the CWSRF Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve.

7. Annual Reporting
In accordance with 2 CFR 200.328 and 40 CFR 35.3165 the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on

environmental results; 4) compliance with the Green Project Reserve requirement; and 5) use of additional subsidization.

8. Program Income from Administrative Fees

Program income earned during the grant period may be used for the specific purposes identified in 2 CFR 200.307 and 2 CFR 1500-7. The recipient agrees to comply with EPA's "Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance" issued October 20, 2005 as amended by subsequent guidance. Specifically, the State has agreed: 1) to maintain records which account for fees separate from the CWSRF project fund, 2) to identify in the IUP all types of fees charged on loans, including the fee rate, and the amount of fees available, and 3) to include in the annual report the types of fees charged on loans, the amount of fees collected, and how those amounts were used.

9. Signage

The recipient agrees to comply with the SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide.

10. Green Project Reserve

The recipient agrees to make a timely and concerted good faith solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The State's annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% of its capitalization grant. The state must document the GPR solicitation process in its IUP and Annual Report and explain, if applicable, why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any State not meeting the 10 percent requirement must outline in the Annual Report how they will expand their GPR solicitation for the following year.

11. Additional Subsidy

In addition to the additional subsidy that can be used at a state's discretion as described in the Water Resources Reform and Development Act (WRRDA), the recipient agrees to use ten percent of the funds available in the capitalization grant to provide additional subsidy to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants (or any combination of these), which shall be used only where such funds are provided as initial financing for an eligible recipient or to buy, refinance, or restructure the debt obligations of eligible recipients only where such debt was incurred after December 18. 2015.

11. Geospatial Data Standards (include in T&C if answer Yes to B15 on FR)
All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

12. American Iron and Steel

(a) ***Definitions.*** As used in this award term and condition—

(1) "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) ***Domestic preference.***

(1) This award term and condition implements -the Water Resources Reform and Development Act of 2014 (WRRDA) by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided in paragraph (b)(2) and (b)(3) of this section and condition.

(2) This requirement does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.

(3) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—

(i) applying the requirement would be inconsistent with the public interest;

(ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) ***Request for a Waiver under (b)*****(3)**

(1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(3) of this section.

(2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the -FY 2015 Water Resource Reform and Development Act.

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

13. Wage Rate Requirements

The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of $2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Preamble

With respect to the Clean Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.
Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

ATTACHMENT 1

I. Requirements Under The Water Resources Reform and Development Act of 2014 (WRRDA) For Sub recipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Water Resources Reform and Development Act of 2014 (WRRDA) - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact **INSERT EPA REGIONAL CONTACT NAME, EMAIL, and TELEPHONE NUMBER,** of EPA, - for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/whd/

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA) -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in

more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State

recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to

make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

II. Requirements Under The Water Resource Reform and Development Act of 2014 (WRDA) -) For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under –FY 2014 Water Resource Reform and Development Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact **INSERT EPA REGIONAL CONTACT NAME, EMAIL, and TELEPHONE NUMBER,** EPA Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/whd/

Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2015 Water Resouce Reform and Development Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund -. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to **INSERT STATE CONTACT NAME, EMAIL, and TELEPHONE NUMBER** for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2015 Water Resouce Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov. .

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall

be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the

actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and Sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

FFY -2015 CWSRF Programmatic Terms and Conditions

1. Payment Schedule
The recipient agrees to accept grant funds that will be released by EPA utilizing the ASAP payment method. Access to these funds will be in accordance with the following schedule:

Each Region seems to follow its own format for this schedule. This format is provided as a suggestion only. Grants offices have sometimes had difficulty transferring an insert table from an FR to an Award document in IGMS–a list like this might be better easier.

Payment Quarter	Payment Date	Payment Amount
FFY-2015/Quarter -2	3/1/2015	$
FFY2015/Quarter -3	6/1/2015	$

2. State Match
The recipient agrees to deposit into its State Revolving Fund (SRF) a match equal to at least 20 percent of the amount awarded in the capitalization grant.

3. Intended Use Plan and Operating Agreement
The entire contents of the SFY 2016 Intended Use Plan (IUP) and the Operating Agreement (OA) are incorporated hereto by reference and made a part of this Assistance Agreement.

4. Travel
EPA approves the use of Federal funds for travel budgeted in capitalization grants for implementing the CWSRF program. The recipient agrees to use Federal funds to participate in training and professional development activities integral to the effective implementation and management of the CWSRF program.

5. Clean Water National Information Management System (CWNIMS)
The recipient agrees to input data, as required by EPA to the CWNIMS. EPA agrees to provide technical assistance to the State in its use of the CWNIMS as a management information system.

6. Environmental Benefits Reporting
The recipient of funds for the State Revolving Funds (SRF) from the Consolidated and Further Continuing Appropriations Act, -2015, P.L. 113--59 agrees to comply with all requests for data related to the use of the funds under Subchapter VI of the Clean Water Act (CWA), and to report all uses of the funds no less than quarterly, as the Environmental Protection Agency specifies for the CWSRF Benefits Reporting database. This reporting shall include but not be limited to data with respect to compliance with the Green Project Reserve (GPR-

7. Annual Reporting
In accordance with 40 CFR 31.40 and 40 CFR 35.3165 the recipient agrees to provide in its Annual Report information regarding key project characteristics, milestones, and environmental/public health protection results in the following areas: 1) achievement of the outputs and outcomes established in the Intended Use Plan; 2) the reasons for delays if established outputs or outcomes were not met; 3) any additional pertinent information on environmental results; 4) compliance with the Green Project Reserve requirement; and 5) use of additional subsidization.

8. Program Income from Administrative Fees
Program income earned during the grant period may be used for the specific purposes identified in 2 CFR 200.307 and 2 CFR 1500-7. The recipient agrees to comply with EPA's "Guidance on Fees Charged by States to Recipients of Clean Water State Revolving Fund Program Assistance" issued October 20, 2005 as amended by subsequent guidance Specifically, the State has agreed: 1) to maintain records which account for fees separate from the CWSRF project fund, 2) to identify in the IUP all types of fees charged on loans, including the fee rate, and the amount of fees available, and 3) to include in the annual report the types of fees charged on loans, the amount of fees collected, and how those amounts were used.

9. Signage

The recipient agrees to comply with the SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide.

10. Green Project Reserve
The recipient agrees to make a timely and concerted good faith solicitation for projects that address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. A good faith solicitation must be open to all GPR eligible projects in each of the four GPR categories. The State's annual open solicitation for projects will be deemed sufficient for these purposes as long as that solicitation was open to all GPR eligible projects in each of the four GPR categories. The recipient agrees to include in its IUP such qualified projects, or components of projects, that total an amount at least equal to 10% of its capitalization grant. The state must document the GPR solicitation process in its IUP and Annual Report and explain, if applicable, why GPR projects totaling at least 10 percent of the capitalization grant were not able to be funded. Any State not meeting the 10 percent requirement must outline in the Annual Report how they will expand their GPR solicitation for the following year.

11. Geospatial Data Standards (include in T&C if answer Yes to B15 on FR)
All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

12. American Iron and Steel

(a) ***Definitions.*** As used in this award term and condition—

(1) "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) ***Domestic preference.***

(1) This award term and condition implements -the Water Resources Reform and Development Act of 2014 (WRRDA) by requiring that all iron and steel products used for a project for the construction, alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided in paragraph (b)(2) and (b)(3) of this section and condition.

(2) This requirement does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.

(3) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—

(i) applying the requirement would be inconsistent with the public interest;

(ii) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) ***Request for a Waiver under (b)*****(3)**

(1) Any recipient request to use foreign iron or steel products in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron or steel products cited in accordance with paragraph (b)(3) of this section.

(2) If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.

(3) Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with the -FY 2015 Water Resource Reform and Development Act.

(d) This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

13. Wage Rate Requirements

The recipient agrees to include in all agreements to provide assistance for the construction of treatment works carried out in whole or in part with such assistance made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or with such assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both, a term and condition requiring compliance with the requirements of section 513 of that Act (33 U.S.C. 1372) in all procurement contracts and sub-grants, and require that loan recipients, procurement contractors and sub-grantees include such a term and condition in subcontracts and other lower tiered transactions. All contracts and subcontracts for the construction of treatment works carried out in whole or in part with assistance made available as stated herein shall insert in full in any contract in excess of $2,000 the contract clauses as attached hereto entitled "Wage Rate Requirements Under The Clean Water Act, Section 513." This term and condition applies to all agreements to provide assistance under the authorities referenced herein, whether in the form of a loan, bond purchase, grant, or any other vehicle to provide financing for a project, where such agreements are executed on or after October 30, 2009.

Preamble

With respect to the Clean Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides sub grants or loans to eligible entities within the State. Typically, the sub recipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.
Occasionally, the sub recipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring sub recipients' compliance with the wage rate requirements set forth herein, those sub recipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

ATTACHMENT 1

I. Requirements Under The Water Resources Reform and Development Act of 2014 (WRRDA) For Sub recipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Water Resources Reform and Development Act of 2014 (WRRDA) - with respect to State recipients and sub recipients that are governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact **INSERT EPA REGIONAL CONTACT NAME, EMAIL, and TELEPHONE NUMBER,** of EPA, - for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/whd/

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the Water Resources Reform and Development Act of 2014 (WRRDA) -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or -FY 2015 Water Resource Reform and Development Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in

more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State

recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to

make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the

Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient**,** upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years

from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing hat the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c) The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The sub recipient shall periodically review contractors and subcontractor's use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

II. Requirements Under The Water Resource Reform and Development Act of 2014 (WRDA) -) For Sub recipients That Are Not Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under –FY 2014 Water Resource Reform and Development Act with respect to sub recipients that are not governmental entities. If a sub recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient for guidance. If a State recipient needs guidance, the recipient may contact **INSERT EPA REGIONAL CONTACT NAME, EMAIL, and TELEPHONE NUMBER,** EPA Grants Management Office for guidance. The recipient or sub recipient may also obtain additional guidance from DOL's web site at http://www.dol.gov/whd/

Under these terms and conditions, the sub recipient must submit its proposed DB wage determinations to the State recipient for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors.

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2015 Water Resouce Reform and Development Act -, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund -. If a sub recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the sub recipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Sub recipients must obtain proposed wage determinations for specific localities at www.wdol.gov. After the Sub recipient obtains its proposed wage determination, it must submit the wage determination to **INSERT STATE CONTACT NAME, EMAIL, and TELEPHONE NUMBER** for approval prior to inserting the wage determination into a solicitation, contract or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments unless subsequently directed otherwise by the State recipient Award Official.)

(b) Sub recipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the sub recipient shall monitor www.wdol.gov. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The sub recipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the sub recipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the sub recipient.

(ii) If the sub recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the sub recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The sub recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(c) If the sub recipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the sub recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(d) Sub recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a sub recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the sub recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the sub recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The sub recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the sub recipient(s) shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF - or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2015 Water Resouce Reform and Development Act -, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Sub recipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov. .

(ii)(A) The sub recipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sub recipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the sub recipient(s) to the State award official. The State award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the sub recipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request, and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall

be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the

actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the sub recipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the sub recipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the sub recipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sub recipient(s).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and Sub recipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of $100,000.

(a) Contract Work Hours and Safety Standards Act. The sub recipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The sub recipient shall upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Sub recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Sub recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The sub recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The sub recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The sub recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Sub recipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Sub recipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence."

(c). The sub recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The sub recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable the sub recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Sub recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the sub recipient shall verify evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The sub recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Sub recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at http://www.dol.gov/whd/america2.htm.

Kansas Water Pollution Control Revolving Fund
Fiscal Sustainability Plan
Guidance
February 4, 2015

All projects submitting funding applications to the Kansas Water Pollution Control Revolving Fund on or after October 2, 2014, will be required to develop or certify that the system has developed a Fiscal Sustainability Plan (FSP). At a minimum, the Fiscal Sustainability Plan must include:

- An inventory of critical assets that are a part of the treatment works;
- A written plan to evaluate the condition and performance of all treatment, pumping, and collection system assets or asset grouping to be inventoried;
- A certification from the borrower that the loan recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan;
- A plan for maintaining, repairing, rehabilitating, and, as necessary, replacing the treatment works and a plan for funding such activities.

The final construction payment for the approved KWPCRF loan will be processed until the FSP has been developed and is being implemented. The review of the FSP will be documented by Kansas Department of Health and Environment – Bureau of Water staff by written correspondence to the loan recipients at the time of the final construction inspection report. The development of the FSP is an expense eligible for payment by the KWPCRF loan. The KDHE Fiscal Sustainability Plan template to be used by loan recipients to comply with this requirement follows (13 pp).

Rodney R. Geisler, P.E., Chief
Municipal Programs Section
Bureau of Water
KDHE

FISCAL SUSTAINABILITY PLAN

For the Small Town, Kansas, Wastewater Collection and Treatment System

This plan outlines a Fiscal Sustainability Plan (FSP) for the City of Small Town, County of Xxxxx, State of Kansas, as required by the Kansas Water Pollution Control Revolving Fund (KWPCRF) to provide a plan to develop an Asset Management Plan (AMP) and a financial plan to provide funds needed to pay for the ongoing operation, maintenance, repair, rehabilitation, and replacement expenses associated with the City's wastewater collection, pumping, and treatment system.

WHEREAS, the City of Small Town, Kansas, has constructed and is responsible to maintain the wastewater treatment works; and

WHEREAS, the City must pay all ongoing expenses associated with said treatment works and charge the users of said treatment works accordingly;

NOW, THEREFORE, BE IT AGREED:

1. The City will implement a performance measurement and management strategy as part of an ongoing effort to ensure high-quality and efficient use of existing facilities.

2. The city will make it a priority to be energy-efficient and use water efficiently in its provisions of public services.

3. The City will inspect and maintain existing wastewater collection and treatment systems. (See also the attached Operations & Maintenance Question and Answer Format attachment.)

4. The City will establish and maintain appropriate core resources to repair the existing wastewater collection system, pumping stations, and treatment system with the expectations:

a. The wastewater treatment lagoon will need major repairs in 20 years, which will be financed by issuing debt for necessary improvements at that time;
b. The pump station will need replacement within 20 years (by no later than 20XX) with an expected 20 year replacement cycle thereafter at a current estimated cost (current year 20XX) of $XX,000;
c. Manholes and sewer lines owned by the city will be inspected on an ongoing basis with a written summary of conditions and all defects and cost estimates of recommended rehabilitation measures, with inspection of a minimum 5% of the collection system each year on the average beginning in 20XX (current year). The entire collection system should therefore be inspected by 20XX (current year plus 20 years). The annual summaries of these inspections shall be made available to KDHE inspection staff;
d. Private service lines connecting to the sewer lines owned by the city are the responsibility of the property owner. The city will coordinate with individual property owners as and when needed.
e. The city will create a “rehabilitation and replacement” fund/account to receive and maintain annual payments of funds within the wastewater utility to allow the recommended rehabilitation measures as identified from the ongoing inspections to be repaired on an ongoing basis. This includes the sewage pumping station major maintenance and replacement, ongoing manhole and sewer line inspections, and rehabilitation/repairs to manholes, sewer lines, and the service line connection to the sewer lines owned by the city

5. The City will establish the appropriate cost-recovery target for its user charge fee to establish the appropriate reserves to fund on-going maintenance, repairs, and rehabilitation of the Small Town Wastewater Collection and Treatment systems. Informational documents are attached. The annual amount transferred into the “rehabilitation and replacement” fund/account shall initially be $12,200 (amount is an example for this generic draft document), with the annual amount being increased or

decreased as determined necessary by the annual review of needs and cost estimates and expenditures.

6. The City will consider competitive contracting services and equipment when appropriate and where clear cost-effective alternatives exist.

7. The City will review revenue performance annually. (See also the attached Appendix A and Appendix B attachments.)

This agreement shall be in full force and effect from and after its passage and approval.

Passed by the Council of the City of Small Town, Kansas, this XX day of Xxxxxx, 201X.

_____

Mayor

ATTEST:

_____

City Clerk

City of Small Town, Kansas, Lagoon, Pumping Station, and Gravity Sewer
Operation, Maintenance, and Replacement Guidance
Questions and Answer Format

1.A. Does the city have a Certified Operator to operate and maintain the wastewater system?

____ Yes, certified operator on staff (provide name and level of certification)

_____

____ No, see 1.B. below.

1.B. Does the city have an Operator-In-Training (OIT) on staff learning to operate and maintain the wastewater system?

____ Yes, Operator-In-Training on staff (provide name of OIT)

_____

____ If No, contact Vickie Jo Wessel of KDHE at vwessel@kdheks.gov, or by telephone at 785.296.2976

2.A. Does the city have adequate equipment to operate and maintain the lagoons, pumping station, and gravity collection system? (Check the list below to indicate the equipment the city owns.)

____ Maintenance Vehicle (Provide year, make and model)

_____

___ Mowing Equipment (Provide year, make and model)

_____

____ Sewer Cleaning Machine (Provide type, year, make and model)

_____

____ Pump Station (if appl.) Tools, Spare Parts, Electrician or Electrical Support Services (List All) _____

_____

____ Smoke Testing Equipment

____ TV Inspection Equipment (Provide make and model) _____

_____

____ Other _____

2.B. If the city does not own adequate equipment for emergency cleaning and minor repairs of manholes and sewer lines, does the city have any Mutual Aid Agreements with other cities, or an "on call" contracts with private companies that provide these services?

____ Yes, emergency cleaning is provided by a Mutual Aid Agreement(s) with (list all city names here) _____

_____

____ Yes, emergency cleaning is provided by "on call" contracts(s) with (list all company names and services here) _____

_____

3. Does the city provide routine cleaning of sewer lines? (Indicate frequency and methods.)

Yes _____

No _____

If not, KDHE recommends the city budget annual funds to clean sewer lines on established schedules based on the type of materials of construction of the pipes. The city should locate every manhole in the system, and update the sewer system maps as the city-wide effort progresses. Vitrified Clay Pipe (VCP) is recommended to be cleaned a minimum of once every 3 years. PVC pipe is recommended to be cleaned a minimum of once every 7 years. In areas with a mix of VCP, "truss" pipe, CIP, DIP, and/or PVC pipe, cleaning is recommended a minimum of once every 5 years. Any "problem spots" in the piping system should be identified, recorded, and cleaned on a more frequent basis based on experience. Any sewer lines rehabilitated by sliplining with CIPP or interior plastic liners can be reduced to cleaning frequency of once every 7 years.

4. Does the city provide routine cleaning and inspection of manholes? (Indicate frequency and methods.)

Yes _____

No _____

If not, KDHE recommends the city inspect and record the conditions of manholes concurrently with the efforts to clean sewer lines on the established schedules stated above. Vitrified Clay Pipe (VCP) sewers tend to have brick manholes, and so would be opened, inspected, and conditions recorded a minimum of once every 3 years. PVC pipe tends to have precast concrete manholes and so would be opened, inspected, and conditions recorded a minimum of once every 7 tears. In areas with a mix of VCP, "truss", CIP, DIP, and/or PVC pipe, the manholes may also be a mix of brick and precast concrete, and conditions would be recorded a minimum of once every 5 years. Any "problem spots" in the system of manholes should be identified, recorded, and considered for rehabilitation when discovered.

5. Does the city routinely provide or contract for television inspection and record keeping of information as gathered after cleaning of sewer lines? (Indicate frequency and methods.)

Yes _____

No _____

If not, KDHE recommends the city inspect and record the conditions of the portion of the sewer lines that are accessible from the manhole concurrently with manhole inspections, concurrently with the efforts to clean sewer lines on the established schedules stated above. This information can then be reviewed by an experienced engineer or technician to provide recommendations for TV inspection of certain sewer lines. The TV inspection records would then be reviewed by an experienced engineer or technician to recommend sewer line and manhole repairs and/or rehabilitation. Any "problem spots" in the sewer system should also be rehabilitated with any larger project.

6. Does the city budget annually for manhole rehabilitation and/or sewer line rehabilitation or replacement? (Indicate annual budget amount for each.)

Yes _____

No _____

KDHE recommends the routine cleaning of sewer lines, manholes inspections and recording of defects, and TV inspections of selected sewer lines be provided funding with the annual budget process. Perhaps manhole rehabilitation can also be provided on an annual budget "cash flow" basis. If the system is in good condition and sewer line rehabilitation needs are relatively small, perhaps rehabilitation of sewer lines can also be provided on an annual budget "cash flow" basis.

KDHE recommends the sewer systems be cleaned, inspected, and defects recorded with rehabilitation or replacement as needed. The initial review inspections can be completed with a

cleaning program for the entire sewer system of 3 to 7 years, as discussed above. For systems constructed of VCP pipe and brick manholes, an initial minimum inspection and rehabilitation effort to complete 5% of the system per year, on the average, is recommended. For systems constructed of PVC pipe (or pipes sliplined with CIPP or plastic pipe) and precast concrete manholes, a minimum inspection and rehabilitation effort to complete 2% of the system per year, on the average, is recommended. When budgeting to rehabilitate or replace sewer lines, a larger city-wide effort may be in order to be funded with debt financing.

7. Does the city have a program to detect and remove private sector sources of infiltration and inflow? (Please provide a brief description of practices and attach any applicable city ordinances.)

Yes _____

_____

If not, KDHE recommends operator training and recommends the city establish ordinance as necessary to resolve defects in the privately-owned portion of the system.

The city is encouraged to provide additional information and summary here of recent (in the prior 15 years) rehabilitation and replacement investments in the collection, pumping, and treatment systems serving the city.

APPENDIX "A" TO USER CHARGE ORDINANCE
Actual Water Use Rate Structure

This appendix presents the methodology to be used in calculating user charge rates and illustrates the calculations followed in arriving at the first year's user charges. The charges established in this appendix are based on estimates of expenses and loadings. The actual expenses and loadings that occur may differ from these estimates and certainly they will change as time passes. Therefore, the user charges must be re-established whenever necessary to reflect actual expenses and loadings. Once the system is in use, the expenses and loadings can be determined from operating records and the user charges can be adjusted based on these figures.

1. Expenses: The total annual expenses associated with the treatment works are estimated as follows:

Item	Annual Expense
Billing and Collection	_____
Administrative	_____
Power	_____
Labor (including fringe benefits)	_____
Material Costs	_____
Replacement Costs (See Appendix B)	_____
(Debt Service)	_____
Other	_____
TOTAL ANNUAL BUDGET EXPENSE	_____

2. Loadings:
The initial hydraulic loading is estimated to be _____ gal/year.

(NOTE: For administrative ease, the annual hydraulic loading to the wastewater treatment plant used for billing may be assumed to be four times the winter quarter ***water usage*** for the municipality from both public and private water supplies. *(Do **not** use measured or estimated wastewater flows for this calculation.)* By using winter quarter water usage, residential users will not be charged for consumptive use of water during the summer months. The difference between actual total wastewater flow at the wastewater treatment plant and the actual total potable water used by users of the municipality is infiltration/inflow. By calculating a unit flow charge based on the total annual water usage and the total annual budget, the cost of transporting and treating infiltration/inflow is being distributed according to flow volume of the users. This approach is shown because of its ease of administration and because infiltration/inflow tends to be less significant in municipalities where flat rate structures are acceptable because of the collection system size, age of the collection system, and type of treatment generally employed in these municipalities.)

3. Unit Cost:
The initial unit cost for flow in $/gallons =
Total annual budget expense / total annual flow.

(NOTE: If debt service is to be addressed in this ordinance, it may be allocated in the same manner or it may be allocated in any other manner that the municipality desires.)

4. Establishment of User Classes:

User	Number of Users	Average Monthly Water Used per User	Total Annual Water Used	Cumulative Usage per Class
Residential Class Residential	XX	XXX	XXX	XXX
Light Commercial/ Institutional Filling Station Bank Drive In Bowling Alley Church	 XX XX XX XX XX	 XXX XXX XXX XXX XXX	 XXX XXX XXX XXX XXX	 XXX
Heavy Commercial Car Wash Restaurant Laundromat	 XX XX XX	 XXX XXX XXX	 XXX XXX XXX	 XXX
Heavy Institutional School	XX	XXX	XXX	XXX
TOTAL				XXX

(NOTE: The establishment of various user classes is dependent, of course, on the particular users discharging to the city's treatment works. The classes must be established such that the individual users within a single user class do not vary significantly in volume or strength of wastewater contributed to the treatment works.)

5. Calculation of charges to users in each user class:

Monthly charge per user in a particular user class = $\frac{\text{(cumulative class usage) (unit cost)}}{\text{(12) (number of users in class)}}$

where: Monthly charge per user is in dollars
Cumulative class usage is in gallons from paragraph 4
Unit cost is in $/gallon from paragraph 3
Number of users in class is from paragraph 4, and
12 is a conversion factor.

Actual user charges for each user class are to be inserted into the sewer user charge ordinance.

6. Actual calculations for each user class follow:
(To be provided by city staff or consultants)

Alternative – Simplified Flat Rate Structure

1. Determine Total Annual Budget Expense

2. Determine Total Number of Connections to System

3. Calculate Monthly User Charge per Connection:

Monthly flat rate user charge per customer connection =

$\frac{\text{Total annual budget expense}}{}$ (from prior page) / (Number of Connections) (12)

4. Actual Calculations for Flat Rate Billing Structure follow:
(To be provided by city staff or consultants)

Appendix B on the following 3 pages provides a calculation of the annual deposit into the Replacement Account to provide for rehabilitation and replacement of equipment, manholes, and sewer lines.

APPENDIX B
TO
USER CHARGE ORDINANCE

This appendix contains a replacement schedule that was developed to determine the amount of revenue needed to fund the Replacement Account. The replacement schedule lists the equipment in the treatment works, the estimated dates when the equipment will have to be replaced, and the estimated cost of replacement (which must include an allowance for inflation) over the useful life of the treatment works. Also listed is the estimated cash flow that will occur in the Replacement Account. The replacement dates and costs shown are estimates; the actual replacement dates and costs could be significantly different from those shown. If the actual replacement expenses differ significantly from those listed in the replacement schedule, the funding of the Replacement Account should be adjusted accordingly.

REPLACEMENT SCHEDULE

Years From Treatment Works In Operation	Replacement Item	Replacement Account		
		Expenditure	Income	Balance
20 years (20XX)	Main Sewage Pumping Station	Est. $70,000 (20XX)		
Every 5 Years	Repairs to Main Pumping Station	Est. $5,000 every 5 years		
Every 10 years	Repairs to Lagoons Erosion Protection	Est. $5,000 Every 10 Years		
Annually	Inspect Manholes and Sewer Lines	$1,000		
Annually	Rehabilitate Manholes and Sewer Lines	$5,000		

SAMPLE CALCULATION OF ANNUAL REPLACEMENT REVENUE TO BE COLLECTED

I. Today's Replacement Cost	5 Years	10 Years	15 Years	20 Years
Manhole & Sewer Line Insps. - $1,000 per year; Total $20,000				
Manhole & Sewer Line Rehab. - $5,000 per year; Total $100,000				
Repairs to Main Sewage Pump Station	5,000	5,000	5,000	
Repairs to Lagoon Erosion Protection		5,000		5,000
Sewage Pump Station Replacement				70,000
Annual Manhole and Sewer Line - $6,000	$5,000	$10,000	$5,000	$75,000

II. Future Replacement Costs (Assumed 2% Inflation)	Cost at:			
Present Cost	5 Years	10 Years	15 Years	20 Years
(Interest Factor - F/P @ 2%)	(1.10)	(1.22)	(1.35)	(1.49)
$5,000 (5-Year Equipment Cycle)	5,500	N/A	N/A	N/A
$10,000 (10-Year Equipment Cycle)	N/A	12,200	N/A	N/A
$5,000 (15-Year Equipment Cycle)	N/A	N/A	6,750	N/A
$80,000 (20-Year Equipment Cycle)	N/A	N/A	N/A	111,750
Future Replacement Costs	5,500	12,200	6,750	111,750

III. How much is needed annually?				
$6,000 per year; $120,000 for Manhole and Sewer Rehab.				
Plus - Future Replacement Costs	5,500	12,200	6,750	111,750

Total Reimbursement Revenue for the 20 year period - $136,200

Annual amount required to Meets total Replacement Revenues Needs - $12,200 (NOTE: Interest Earnings on cash balances are assumed to be zero.)

APPENDIX "B" TO USER CHARGE ORDINANCE

Sample Replacement Schedule

Years from Treatment Works in Operation	Replacement Item	Replacement Account		
		Expenditure	Income	Balance
January 1, 2016			(Balance + Int.)	
1	Annual Manhole and Sewer Line Inspections	1,000	12,200	11,200
2	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 5,200 + Int.	17,400
3	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 11,400 + Int.	23,600
4	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 17,600 + Int.	29,800
5	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation Repairs to Main Sewage Pumping Station	1,000 5,000 5,500	12,200 18,300 + Int.	30,500
6	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 24,500 + Int.	36,700
7	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 30,700 + Int.	42,900
8	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 36,900 + Int.	49,100
9	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 43,100 + Int.	55,300
10	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation Repairs to Main Sewage Pumping Station Repairs to Lagoon Erosion Protection	1,000 5,000 6,100 6,100	12,200 37,100 + Int.	49,300
11	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 43,300 + Int.	55,500
12	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 49,500 + Int.	61,700
13	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 55,700 + Int.	67,900
14	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 61,900 + Int.	74,100
15	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation Repairs to Main Sewage Pumping Station	1,000 5,000 6,750	 12,200 61,350 + Int.	73,550
16	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 67,550 + Int.	79,750
17	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 79,950 + Int.	92,150
18	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 86,150 + Int.	98,350
19	Annual Manhole and Sewer Line Inspections Annual Manhole and Sewer Line Rehabilitation	1,000 5,000	12,200 92,350 + Int.	104,550
20	Annual Manhole and Sewer Line Rehabilitation Sewage Pump Station Replacement Repairs to Lagoon Erosion Protection	5,000 104,300 7,450	12,200 (12,200)	0

(CITY LETTERHEAD)

(DATE)

Kansas Water Pollution Control Revolving Fund
Municipal Programs Section
Bureau of Water
1000 SW Jackson Street, Suite 420
Topeka, Kansas 66612-1367

Re: _____, Kansas
KWPCRF Project No. C20 _____
Kansas Water Pollution Control Revolving Fund
Fiscal Sustainability Plan Certification

All projects submitting funding applications to the Kansas Water Pollution Control Revolving Fund on or after October 2, 2014, are required to certify that the system has developed a Fiscal Sustainability Plan (FSP). This letter certifies the Fiscal Sustainability Plan for the referenced loan recipient has been completed which includes:

- An inventory of critical assets that are a part of the treatment works;
- A written plan to evaluate the condition and performance of all treatment, pumping, and collection system assets or asset grouping to be inventoried;
- This certification from the borrower that the loan recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan;
- A plan for maintaining, repairing, rehabilitating, and, as necessary, replacing the treatment works and a plan for funding such activities.

We understand the final construction payment for the approved KWPCRF loan can now be processed as this FSP has been developed and is being implemented and this Certification is hereby submitted. The review of the FSP will be documented by Kansas Department of Health and Environment – Bureau of Water staff by written correspondence to the loan recipients at the time of the final construction inspection report. The development of the FSP is an expense eligible for payment by the KWPCRF loan. The KDHE Fiscal Sustainability Plan template has been completed by loan recipients to comply with this requirement and is attached.

Sincerely yours,

(Authorized Representative)
(Name of Loan Recipient)

pc: (Loan Recipient)

Appendix F

Principal Forgiveness and Green Project Reserve Policy and Procedures Applicable to the FFY 2016 Federal Funding Provided to the Kansas Water Pollution Control Revolving Fund

The “Green Project Reserve” policy guidance memo from the FFY 2012 program guidance continues to be applicable to both the FFY 2015 and FFY 2016 federal funding, and so the Green Project Reserve policy memo is also included here. EPA has also issued a new CWSRF Green Infrastructure Policy memo dated FINAL 1-6-16 which is included here.

The document provided within prior year’s Intended Use Plans for Principal Forgiveness funding to encourage Green Project Reserve designs in KWPCRF funded projects has been updated to reflect the new Affordability Criteria requirements of the CWSRF program. KDHE will now complete the effort to provide the amounts of principal forgiveness for GPR designs as indicated in prior loan agreements, and so additional principal forgiveness funding will be provided for all prior qualifying EPA and KDHE GPR costs, including increased costs due to bid opening and change orders.

The remaining additional principal forgiveness amount now provided by Congressional appropriation from the FFY 2016 Cap Grant will be provided to new loan agreements in accordance with the new Affordability Criteria procedures presented in this Appendix F.

A new concept is being developed to distribute principal forgiveness for the KWPCRF in future years. A portion of the entire principal forgiveness funding amount available from the FFY 2016 Cap Grant will be provided to projects as indicated in the prior paragraph above. KDHE will continue to develop and encourage projects that qualify for Green Project Reserve status under the EPA program (see also Appendix A), but will not use Principal Forgiveness to encourage these types of project designs.

KDHE is now providing new policies and procedures to distribute the Principal Forgiveness amounts from the FFY 2017 capitalization grants remaining funds based moreso on cost impacts to user charges, and affordability concerns.

Please note the WRRDA required KDHE write an “Affordability Criteria” guidance document for the KWPCRF. This document has been prepared and distributed through a separate public hearing process. The new Affordability Criteria guidance for the KWPCRF will change the methods of distributing the principal forgiveness additional subsidy, and is included in the Appendix F.

KDHE is now reconsidering the use of the 10% additional subsidy that is not subject to the WRRDA restrictions.

ATTACHMENT 2

2012 Clean Water State Revolving Fund 10% Green Project Reserve: Guidance for Determining Project Eligibility

I. Introduction: The Fiscal Year (FY) 2012 Appropriation Act (P.L. 112-74) included additional requirements affecting the Clean Water State Revolving Fund (SRF) program. This attachment is included in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs*. This attachment includes the details for determining green project reserve (GPR) eligibility for the Clean Water SRF program.

Public Law 112-74 states: "*Provided*, That for fiscal year 2012, to the extent there are sufficient eligible project applications, not less than 10 percent of the funds made available under this title to each State for Clean Water State Revolving Fund capitalization grants shall be used by the State for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities." These four categories of projects are the components of the Green Project Reserve (GPR).

II. GPR Goals: Congress' intent in enacting the GPR is to direct State investment practices in the water sector to guide funding toward projects that utilize green or soft-path practices to complement and augment hard or gray infrastructure, adopt practices that reduce the environmental footprint of water and wastewater treatment, collection, and distribution, help utilities adapt to climate change, enhance water and energy conservation, adopt more sustainable solutions to wet weather flows, and promote innovative approaches to water management problems. Over time, GPR projects could enable utilities to take savings derived from reducing water losses and energy consumption, and use them for public health and environmental enhancement projects. Additionally, EPA expects that green projects will help the water sector improve the quality of water services without putting additional strain on the energy grid, and by reducing the volume of water lost every year.

III. Background: For the FY 2010 GPR Guidance, EPA used an inclusive approach to determine what is and is not a 'green' water project. Wherever possible, this guidance references existing consensus-based industry practices to provide assistance in developing green projects. Input was solicited from State-EPA and EPA-Regional workgroups and the water sector. EPA staff also reviewed approaches promoted by green practice advocacy groups and water associations, and green infrastructure implemented by engineers and managers in the water sector. EPA also assessed existing 'green' policies within EPA and received input from staff in those programs to determine how EPA funds could be used to achieve shared goals.

The FY 2012 SRF GPR Guidance provides States with information needed to determine which projects count toward the GPR requirement. The intent of the GPR Guidance is to describe projects and activities that fit within the four specific categories listed in the FY 2012

Appropriations Act. This guidance defines each category of GPR projects and lists projects that are clearly eligible for GPR, heretofore known as categorically eligible projects. For projects that do not appear on the list of categorically projects, they may be evaluated for their eligibility within one of the four targeted types of GPR eligible projects based upon a business case that provides clear documentation (see the *Business Case Development* sections in Parts A & B below).

GPR may be used for planning, design, and/or building activities. Entire projects, or the appropriate discrete components of projects, may be eligible for GPR. Projects do not have to be part of a larger capital project to be eligible. All projects or project components counted toward the GPR requirement must clearly advance one or more of the objectives articulated in the four categories of GPR discussed below.

The Green Project Reserve sets a new precedent for the SRFs by targeting funding towards projects that States may not have funded in prior years. Water quality benefits from GPR projects rely on proper operation and maintenance to achieve the intended benefits of the projects and to achieve optimal performance of the project. EPA encourages states and funding recipients to thoroughly plan for proper operation and maintenance of the projects funded by the SRFs, including training in proper operation of the project. It is noted, however, that the SRFs cannot provide funding for operation and maintenance costs, including training, in the SRF assistance agreements.

CWSRF Eligibility Principles

State SRF programs are responsible for identifying projects that count toward GPR. The following overarching principles, or decision criteria, apply to all projects that count toward GPR and will help states identify projects.

0.1 All GPR projects must otherwise be eligible for CWSRF funding. The GPR requirement does not create new funding authority beyond that described in Title VI of the CWA. Consequently, a subset of 212, 319 and 320 projects will count towards the GPR. The principles guiding CWSRF funding eligibility include:

0.2 All Sec 212 projects must be consistent with the definition of "treatment works" as set forth in section 212 of the Clean Water Act (CWA).

- 0.2-1 All section 212 projects must be publicly owned, as required by CWA section 603(c)(1).
- 0.2-2 All section 212 projects must serve a public purpose.
- 0.2-3 POTWs as a whole are utilized to protect or restore water quality. Not all portions of the POTW have a direct water quality impact in and of themselves (i.e. security fencing). Consequently, POTW projects are not required to have a direct water quality benefit, though most of them will.

0.3 Eligible nonpoint source projects implement a nonpoint source management program under an approved section 319 plan or the nine element watershed plans required by the 319 program.

- 0.3-1 Projects prevent or remediate nonpoint source pollution.
- 0.3-2 Projects can be either publicly or privately owned and can serve either public or private purposes. For instance, it is acceptable to fund land conservation activities that preserve the water quality of a drinking water source, which represents a public purpose project. It is also acceptable to fund agricultural BMPs that reduce nonpoint source pollution, but also improve the profitability of the agricultural operation. Profitability is an example of a private purpose.
- 0.3-3 Eligible costs are limited to planning, design and building of capital water quality projects. The CWSRF considers planting trees and shrubs, purchasing equipment, environmental cleanups and the development and initial delivery of education programs as capital water quality projects. Daily maintenance and operations, such as expenses and salaries are not considered capital costs.
- 0.3-4 Projects must have a direct water quality benefit. Implementation of a water quality project should, in itself, protect or improve water quality. States should be able to estimate the quantitative and/or qualitative water quality benefit of a nonpoint source project.
- 0.3-5 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution or aquatic or riparian habitat degradation should be funded. Where water quantity projects improve water quality (e.g. reduction of flows from impervious surfaces that adversely affect stream health, or the modification of irrigation systems to reduce runoff and leachate from irrigated lands), they would

be considered to have a water quality benefit. In many cases, water quality protection is combined with other elements of an overall project. For instance, brownfield revitalization projects include not only water quality assessment and cleanup elements, but often a redevelopment element as well. Where the water quality portion of a project is clearly distinct from other portions of the project, only the water quality portion can be funded by the CWSRF.

0.3-6 Point source solutions to nonpoint source problems are eligible as CWSRF nonpoint source projects. Section 319 Nonpoint Source Management Plans identify sources of nonpoint source pollution. In some cases, the most environmentally and financially desirable solution has point source characteristics and requires an NPDES discharge permit. For instance, a septage treatment facility may be crucial to the proper maintenance and subsequent functioning of decentralized wastewater systems. Without the septage treatment facility, decentralized systems are less likely to be pumped, resulting in malfunctioning septic tanks.

0.4 Eligible projects under section 320 implement an approved section 320 Comprehensive Conservation Management Plan (CCMP).

0.4-1 Section 320 projects can be either publicly or privately owned.

0.4-2 Eligible costs are limited to capital costs.

0.4-3 Projects must have a direct benefit to the water quality of an estuary. This includes protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on water, and requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution.

0.4-4 Only the portions of a project that remediate, mitigate the impacts of, or prevent water pollution in the estuary watershed should be funded.

0.5 GPR projects must meet the definition of one of the four GPR categories. The Individual GPR categories do not create new eligibility for the CWSRF. The projects that count toward GPR must otherwise be eligible for CWSRF funding.

0.6 GPR projects must further the goals of the Clean Water Act.[1]

[1] Drinking Water Utilities can apply for CWSRF funding

CWSRF Technical Guidance

The following sections outline the technical aspects for the CWSRF Green Project Reserve. It is organized by the four categories of green projects: green infrastructure, water efficiency, energy efficiency, and environmentally innovative activities. Categorically green projects are listed, as well as projects that are ineligible. Design criteria for business cases and example projects that would require a business case are also provided.

1.0 GREEN INFRASTRUCTURE

1.1 Definition: Green stormwater infrastructure includes a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, permeable pavements and cisterns.

1.2 Categorical Projects

- 1.2-1 Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits including: permeable pavement[2], bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
- 1.2-2 Wet weather management systems for parking areas including: permeable pavement[2], bioretention, trees, green roofs, and other practices such as constructed wetlands that can be designed to mimic natural hydrology and reduce effective imperviousness at one or more scales. Vactor trucks and other capital equipment necessary to maintain green infrastructure projects.
- 1.2-3 Implementation of comprehensive street tree or urban forestry programs, including expansion of tree boxes to manage additional stormwater and enhance tree health.
- 1.2-4 Stormwater harvesting and reuse projects, such as cisterns and the systems that allow for utilization of harvested stormwater, including pipes to distribute stormwater for reuse.
- 1.2-5 Downspout disconnection to remove stormwater from sanitary, combined sewers and separate storm sewers and manage runoff onsite.
- 1.2-6 Comprehensive retrofit programs designed to keep wet weather discharges out of all types of sewer systems using green infrastructure technologies and approaches such as green roofs, green walls, trees and urban reforestation, permeable

[2] The total capital cost of permeable pavement is eligible, not just the incremental additional cost when compared to impervious pavement.

pavements and bioretention cells, and turf removal and replacement with native vegetation or trees that improve permeability.

1.2-7 Establishment or restoration of permanent riparian buffers, floodplains, wetlands and other natural features, including vegetated buffers or soft bioengineered stream banks. This includes stream day lighting that removes natural streams from artificial pipes and restores a natural stream morphology that is capable of accommodating a range of hydrologic conditions while also providing biological integrity. In highly urbanized watersheds this may not be the original hydrology.

1.2-8 Projects that involve the management of wetlands to improve water quality and/or support green infrastructure efforts (e.g., flood attenuation).[3]

1.2-8a Includes constructed wetlands.

1.2-8b May include natural or restored wetlands if the wetland and its multiple functions are not degraded and all permit requirements are met.

1.2-9 The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.

1.2-10 Fee simple purchase of land or easements on land that has a direct benefit to water quality, such as riparian and wetland protection or restoration.

1.3 Projects That Do Not Meet the Definition of Green Infrastructure

1.3-1 Stormwater controls that have impervious or semi-impervious liners and provide no compensatory evapotranspirative or harvesting function for stormwater retention.

1.3-2 Stormwater ponds that serve an extended detention function and/or extended filtration. This includes dirt lined detention basins.

1.3-3 In-line and end-of-pipe treatment systems that only filter or detain stormwater.

1.3-4 Underground stormwater control and treatment devices such as swirl concentrators, hydrodynamic separators, baffle systems for grit, trash removal/floatables, oil and grease, inflatable booms and dams for in-line underground storage and diversion of flows.

1.3-5 Stormwater conveyance systems that are not soil/vegetation based (swales) such as pipes and concrete channels. Green infrastructure projects that include pipes to collect stormwater may be justified as innovative environmental projects pursuant to Section 4.4 of this guidance.

1.3-6 Hardening, channelizing or straightening streams and/or stream banks.

1.3-7 Street sweepers, sewer cleaners, and vactor trucks unless they support green infrastructure projects.

1.4 Decision Criteria for Business Cases

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[3] Wetlands are those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, vernal pools, and similar areas.

1.4-1 Green infrastructure projects are designed to mimic the natural hydrologic conditions of the site or watershed.

1.4-2 Projects that capture, treat, infiltrate, or evapotranspire water on the parcels where it falls and does not result in interbasin transfers of water.

1.4-3 GPR project is in lieu of or to supplement municipal hard/gray infrastructure.

1.4-4 Projects considering both landscape and site scale will be most successful at protecting water quality.

1.4-5 Design criteria are available at: http://cfpub.epa.gov/npdes/greeninfrastructure/munichandbook.cfm and http://cfpub.epa.gov/npdes/greeninfrastructure/technology.cfm

1.5 Examples of Projects Requiring A Business Case

1.5-1 Fencing to keep livestock out of streams and stream buffers. Fencing must allow buffer vegetation to grow undisturbed and be placed a sufficient distance from the riparian edge for the buffer to function as a filter for sediment, nutrients and other pollutants.

2.0 WATER EFFICIENCY

2.1 Definition: EPA's WaterSense program defines water efficiency as the use of improved technologies and practices to deliver equal or better services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

2.2 Categorical Projects

2.2-1 Installing or retrofitting water efficient devices, such as plumbing fixtures and appliances

- 2.2-1a For example -- shower heads, toilets, urinals and other plumbing devices
- 2.2-1b Where specifications exist, WaterSense labeled products should be the preferred choice (http://www.epa.gov/watersense/index.html).
- 2.2-1c Implementation of incentive programs to conserve water such as rebates.

2.2-2 Installing any type of water meter in previously unmetered areas

- 2.2-2a If rate structures are based on metered use
- 2.2-2b Can include backflow prevention devices if installed in conjunction with water meter

2.2-3 Replacing existing broken/malfunctioning water meters, or upgrading existing meters, with:

- 2.2-3a Automatic meter reading systems (AMR), for example:
  - 2.2-3a(i) Advanced metering infrastructure (AMI)
  - 2.2-3a(ii) Smart meters
- 2.2-3b Meters with built in leak detection
- 2.2-3c Can include backflow prevention devices if installed in conjunction with water meter replacement

2.2-4 Retrofitting/adding AMR capabilities or leak detection equipment to existing meters (not replacing the meter itself).

2.2-5 Water audit and water conservation plans, which are reasonably expected to result in a capital project.

2.2-6 Recycling and water reuse projects that replace potable sources with non-potable sources,

2.2-6a Gray water, condensate and wastewater effluent reuse systems (where local codes allow the practice)

2.2-6b Extra treatment costs and distribution pipes associated with water reuse.

2.2-7 Retrofit or replacement of existing landscape irrigation systems with more efficient landscape irrigation systems, including moisture and rain sensing equipment.

2.2-8 Retrofit or replacement of existing agricultural irrigation systems with more efficient agricultural irrigation systems.

2.3 Projects That Do Not Meet the Definition of Water Efficiency

2.3-1 Agricultural flood irrigation.

2.3-2 Lining of canals to reduce water loss.

2.3-3 Replacing drinking water distribution lines. This activity extends beyond CWSRF eligibility and is more appropriately funded by the DWSRF.

2.3-4 Leak detection equipment for drinking water distribution systems, unless used for reuse distribution pipes.

2.4 Decision Criteria for Business Cases

2.4-1 Water efficiency can be accomplished through water saving elements or reducing water consumption. This will reduce the amount of water taken out of rivers, lakes, streams, groundwater, or from other sources.

2.4-2 Water efficiency projects should deliver equal or better services with less net water use as compared to traditional or standard technologies and practices

2.4-3 Efficient water use often has the added benefit of reducing the amount of energy required by a POTW, since less water would need to be collected and treated; therefore, there are also energy and financial savings.

2.5 Examples of Projects Requiring a Business Case.

2.5-1 Water meter replacement with traditional water meters (see AWWA M6 *Water Meters – Selection Installation, Testing, and Maintenance*).

2.5-2 Projects that result from a water audit or water conservation plan

2.5-3 Storage tank replacement/rehabilitation to reduce loss of reclaimed water.

2.5-4 New water efficient landscape irrigation system (where there currently is not one).

2.5-5 New water efficient agricultural irrigation system (where there currently is not one).

3.0 ENERGY EFFICIENCY

3.1 Definition: Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and/or produce/utilize renewable energy.

3.2 Categorical Projects

3.2-1 Renewable energy projects such as wind, solar, geothermal, micro-hydroelectric, and biogas combined heat and power systems (CHP) that provide power to a POTW. (http:///www.epa.gov/cleanenergy). Micro-hydroelectric projects involve capturing the energy from pipe flow.

3.2-1a POTW owned renewable energy projects can be located onsite or offsite.

3.2-1b Includes the portion of a publicly owned renewable energy project that serves POTW's energy needs.

3.2-1c Must feed into the grid that the utility draws from and/or there is a direct connection.

3.2-2 Projects that achieve a 20% reduction in energy consumption are categorically eligible for GPR[4]. Retrofit projects should compare energy used by the existing system or unit process[5] to the proposed project. The energy used by the existing system should be based on name plate data when the system was first installed, recognizing that the old system is currently operating at a lower overall efficiency than at the time of installation. New POTW projects or capacity expansion projects should be designed to maximize energy efficiency and should select high efficiency premium motors and equipment where cost effective. Estimation of the energy efficiency is necessary for the project to be counted toward GPR. If a project achieves less than a 20% reduction in energy efficiency, then it may be justified using a business case.

3.2-3 Collection system Infiltration/Inflow (I/I) detection equipment

3.2-4 POTW energy management planning, including energy assessments, energy audits, optimization studies, and sub-metering of individual processes to determine high energy use areas, which are reasonably expected to result in a capital project are eligible. Guidance to help POTWs develop energy management programs, including assessments and audits is available at http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf.

3.3 Projects That Do Not Meet the Definition of Energy Efficiency

3.3-1 Renewable energy generation that is *privately* owned or the portion of a publicly owned renewable energy facility that does not provide power to a POTW, either through a connection to the grid that the utility draws from and/or a direct connection to the POTW.

3.3-2 Simply replacing a pump, or other piece of equipment, because it is at the end of its useful life, with something of average efficiency.

3.3-3 Facultative lagoons, even if integral to an innovative treatment process.

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[4] The 20% threshold for categorically eligible CWSRF energy efficiency projects was derived from a 2002 Department of Energy study entitled *United States Industrial Electric Motor Systems Market Opportunities Assessment, December 2002* and adopted by the Consortium for Energy Efficiency. Further field studies conducted by Wisconsin Focus on Energy and other State programs support the threshold.

[5] A unit process is a portion of the wastewater system such as the collection system, pumping stations, aeration system, or solids handling, etc.

3.3-4 Hydroelectric facilities, except micro-hydroelectric projects. Micro-hydroelectric projects involve capturing the energy from pipe flow.

3.4 Decision Criteria for Business Cases

3.4-1 Project must be cost effective. An evaluation must identify energy savings and payback on capital and operation and maintenance costs that does not exceed the useful life of the asset. http://www.epa.gov/waterinfrastructure/pdfs/guidebook_si_energymanagement.pdf

3.4-2 The business case must describe how the project maximizes energy saving opportunities for the POTW or unit process.

3.4-3 Using existing tools such as Energy Star's Portfolio Manager (http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager) or Check Up Program for Small Systems (CUPSS) (http://www.epa/cupss) to document current energy usage and track anticipated savings.

3.5 Examples of Projects Requiring a Business Case

3.5-1 POTW projects or unit process projects that achieve less than a 20% energy efficiency improvement.

3.5-2 Projects implementing recommendations from an energy audit that are not otherwise designated as categorical.

3.5-3 Projects that cost effectively eliminate pumps or pumping stations.

3.5-4 Infiltration/Inflow (I/I) correction projects that save energy from pumping and reduced treatment costs and are cost effective.

3.5-4a Projects that count toward GPR cannot build new structural capacity. These projects may, however, recover existing capacity by reducing flow from I/I.

3.5-5 I/I correction projects where excessive groundwater infiltration is contaminating the influent requiring otherwise unnecessary treatment processes (i.e. arsenic laden groundwater) and I/I correction is cost effective.

3.5-6 Replacing pre-Energy Policy Act of 1992 motors with National Electric Manufacturers Association (NEMA) premium energy efficiency motors.

3.5-6a NEMA is a standards setting association for the electrical manufacturing industry (http://www.nema.org/gov/energy/efficiency/premium/).

3.5-7 Upgrade of POTW lighting to energy efficient sources such as metal halide pulse start technologies, compact fluorescent, light emitting diode (LED).

3.5-8 SCADA systems can be justified based upon substantial energy savings.

3.5-9 Variable Frequency Drive can be justified based upon substantial energy savings.

4.0 ENVIRONMENTALLY INNOVATIVE

4.1 Definition: Environmentally innovative projects include those that demonstrate new and/or innovative approaches to delivering services or managing water resources in a more sustainable way.

4.2 Categorical Projects

4.2-1 Total/integrated water resources management planning likely to result in a capital project.

4.2-2 Utility Sustainability Plan consistent with EPA SRF's sustainability policy.

4.2-3 Greenhouse gas (GHG) inventory or mitigation plan and submission of a GHG inventory to a registry (such as Climate Leaders or Climate Registry)

4.3-3a Note: GHG Inventory and mitigation plan is eligible for CWSRF funding.

4.2-3b EPA Climate Leaders:
http://www.epa.gov/climateleaders/basic/index.html
Climate Registry: http://www.theclimateregistry.org/

4.2-4 Planning activities by a POTW to prepare for adaptation to the long-term effects of climate change and/or extreme weather.

4.2-4a Office of Water – Climate Change and Water website:
http://www.epa.gov/water/climatechange/

4.2.5 Construction of US Building Council LEED certified buildings or renovation of an existing building on POTW facilities.

4.2-5a Any level of certification (Platinum, Gold, Silver, Certified).

4.2-5b All building costs are eligible, not just stormwater, water efficiency and energy efficiency related costs. Costs are not limited to the incremental additional costs associated with LEED certified buildings.

4.2-5c U.S. Green Building Council website:
http://www.usgbc.org/displaypage.aspx?CategoryID=19

4.2-6 Decentralized wastewater treatment solutions to existing deficient or failing onsite wastewater systems.

4.2-6a Decentralized wastewater systems include individual onsite and/or cluster wastewater systems used to collect, treat and disperse relatively small volumes of wastewater. An individual onsite wastewater treatment system is a system relying on natural processes and/or mechanical components, that is used to collect, treat and disperse or reclaim wastewater from a single dwelling or building. A cluster system is a wastewater collection and treatment system under some form of common ownership that collects wastewater from two or more dwellings or buildings and conveys it to a treatment and dispersal system located on a suitable site near the dwellings or buildings. Decentralized projects may include a combination of these systems. EPA recommends that decentralized systems be managed under a central management entity with enforceable program requirements, as stated in the *EPA Voluntary Management Guidelines.*
http://www.epa.gov/owm/septic/pubs/septic_guidelines.pdf

4.2-6b Treatment and Collection Options: A variety of treatment and collection options are available when implementing decentralized wastewater systems. They typically include a septic tank, although many configurations include additional treatment components following or in place of the septic tank, which provide for advanced treatment solutions. Most disperse treated effluent to the soil where further treatment occurs, utilizing either conventional soil absorption fields or alternative soil dispersal methods which provide advanced treatment. Those that

discharge to streams, lakes, tributaries, and other water bodies require federal or state discharge permits (see below). Some systems promote water reuse/recycling, evaporation or wastewater uptake by plants. Some decentralized systems, particularly cluster or community systems, often utilize alternative methods of collection with small diameter pipes which can flow via gravity, pump, or siphon, including pressure sewers, vacuum sewers and small diameter gravity sewers. Alternative collection systems generally utilize piping that is less than 8 inches in diameter, or the minimum diameter allowed by the state if greater than 8 inches, with shallow burial and do not require manholes or lift stations. Septic tanks are typically installed at each building served or another location upstream of the final treatment and dispersal site. Collection systems can transport raw sewage or septic tank effluent. Another popular dispersal option used today is subsurface drip infiltration. Package plants that discharge to the soil are generally considered decentralized, depending on the situation in which they are used. While not entirely inclusive, information on treatment and collection processes is described, in detail, in the "*Onsite Wastewater Treatment Technology Fact Sheets*" section of the EPA Onsite Manual http://www.epa.gov/owm/septic/pubs/septic_2002_osdm_all.pdf and on EPA's septic system website under Technology Fact Sheets. http://cfpub.epa.gov/owm/septic/septic.cfm?page_id=283

4.2-6c For the purposes of the CWSRF, decentralized systems are considered to be section 319 projects and Davis-Bacon does not apply.

4.3 Projects That Do Not Meet the Definition of Environmentally Innovative

4.3-1 Air scrubbers to prevent nonpoint source deposition.

4.3-2 Facultative lagoons, even if integral to an innovative treatment processes.

4.3-3 Surface discharging decentralized wastewater systems where there are cost effective soil-based alternatives.

4.3-4 Higher sea walls to protect POTW from sea level rise.

4.3-5 Reflective roofs at POTW to combat heat island effect.

4.4 Decision Criteria for Business Cases

4.4-1 State programs are allowed flexibility in determining what projects qualify as innovative in their state based on unique geographical or climatological conditions.

4.4-1a Technology or approach whose performance is expected to address water quality but the actual performance has not been demonstrated in the state;

4.4-1b Technology or approach that is not widely used in the State, but does perform as well or better than conventional technology/approaches at lower cost; or

4.4-1c Conventional technology or approaches that are used in a new application in the State.

4.5 Examples of Projects Requiring a Business Case

4.5-1 Constructed wetlands projects used for municipal wastewater treatment, polishing, and/or effluent disposal.

4.5-1a Natural wetlands, as well as the restoration/enhancement of degraded wetlands, may not be used for wastewater treatment purposes and must comply with all regulatory/permitting requirements.

4.5-1b Projects may not (further) degrade natural wetlands.

4.5-2 Projects or components of projects that result from total/integrated water resource management planning consistent with the decision criteria for environmentally innovative projects and that are Clean Water SRF eligible.

4.5-3 Projects that facilitate adaptation of POTWs to climate change identified by a carbon footprint assessment or climate adaptation study.

4.5-4 POTW upgrades or retrofits that remove phosphorus for beneficial use, such as biofuel production with algae.

4.5-5 Application of innovative treatment technologies or systems that improve environmental conditions and are consistent with the Decision Criteria for environmentally innovative projects such as:

4.5-5a Projects that significantly reduce or eliminate the use of chemicals in wastewater treatment;

4.5-5b Treatment technologies or approaches that significantly reduce the volume of residuals, minimize the generation of residuals, or lower the amount of chemicals in the residuals. (National Biosolids Partnership, 2010; *Advances in Solids Reduction Processes at Wastewater Treatment Facilities Webinar*; http://www.e-wef.org/timssnet/meetings/tnt_meetings.cfm?primary_id=10CAP2&Action=LONG&subsystem=ORD%3cbr).

4.5-5b(i) Includes composting, class A and other sustainable biosolids management approaches.

4.5-6 Educational activities and demonstration projects for water or energy efficiency.

4.5-7 Projects that achieve the goals/objectives of utility asset management plans (http://www.epa.gov/safewater/smallsystems/pdfs/guide_smallsystems_assetmanagement_bestpractices.pdf; http://www.epa.gov/owm/assetmanage/index.htm).

4.5-8 Sub-surface land application of effluent and other means for ground water recharge, such as spray irrigation and overland flow.

4.5-8a Spray irrigation and overland flow of effluent is not eligible for GPR where there is no other cost effective alternative.

Business Case Development

This guidance is intended to be comprehensive: however, EPA understands our examples projects requiring a business case may not be all inclusive. A business case is a due diligence document. For those projects, or portions of projects, which are not included in the categorical projects lists provided above, a business case will be required to demonstrate that an assistance recipient has thoroughly researched anticipated 'green' benefits of a project. Business cases will be approved by the State (see section IV.A.a. in the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs*). An

approved business case must be included in the State's project files and contain clear documentation that the project achieves identifiable and substantial benefits. The following sections provide guidelines for business case development.

5.0 Length of a Business Case

- 5.0-1 Business cases must address the decision criteria for the category of project
- 5.0-2 Business cases should be adequate, but not exhaustive.
  - 5.0-2a There are many formats and approaches. EPA does not require any specific one.
  - 5.0-2b Some projects will require detailed analysis and calculations, while others many not require more than one page.
  - 5.0-2c Limit the information contained in the business case to only the pertinent 'green' information needed to justify the project.
- 5.0-3 A business case can simply summarize results from, and then cite, existing documentation – such as engineering reports, water or energy audits, results of water system tests, etc.

5.1 Content of a Business Case

- 5.1-1 Quantifiable water and/or energy savings or water loss reduction for water and energy efficiency projects should be included.
- 5.1-2 The cost and financial benefit of the project should be included, along with the payback time period where applicable. (NOTE: Clean Water SRF requires energy efficiency projects to be cost effective.)

5.2 Items Which Strengthen Business Case, but Are Not Required

- 5.2-1 Showing that the project was designed to enable equipment to operate most efficiently.
- 5.2-2 Demonstrating that equipment will meet or exceed standards set by professional associations.
- 5.2-3 Including operator training or committing to utilizing existing tools such as Energy Star's Portfolio Manager or CUPSS for energy efficiency projects.

5.3 Example Business Cases Are Available at http://www.srfbusinesscases.net/

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

JAN 0 6 2016

MEMORANDUM

SUBJECT: Green Infrastructure Policy for the Clean Water State Revolving Fund Program

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M)

TO: Water Management Division Directors, Regions I-X
Regional SRF Coordinators, Regions I-X

PURPOSE

The purpose of this memorandum is to establish a Green Infrastructure Policy for the Clean Water State Revolving Fund (CWSRF) Program that promotes increased CWSRF financing of green infrastructure projects nationally.[1]

BACKGROUND

Green infrastructure uses vegetation, soils, and natural processes to manage water and create healthier urban environments. At the scale of a city or county, green infrastructure refers to the patchwork of natural areas that provides habitat, flood protection, cleaner air, and cleaner water. At the scale of a neighborhood or site, green infrastructure refers to stormwater management systems (e.g., bioretention, permeable pavements, green roofs, rainwater harvesting) that mimic nature by infiltrating, evapotranspiring, or harvesting rainwater.

Green infrastructure can be an effective approach to addressing the water quality impacts of wet weather events by reducing polluted stormwater discharges and sewer overflows. Research and monitoring of installed practices have demonstrated that green infrastructure's ability to both reduce the volume and flow of stormwater discharges and the concentration of pollutants within stormwater can help to reduce water pollution. In addition, green infrastructure can provide additional environmental and community benefits including reducing urban heat island impacts, decreasing energy use, and improving air quality.

[1] The fiscal year (FY) 2016 omnibus appropriation act sets a goal, subject to eligible projects, that not less than 10 percent of each state capitalization grant be used to fund green infrastructure, water and energy efficiency, and other environmentally innovative projects. In accordance with Administration policy in the FY 2016 President's Budget, subject to eligible projects, we encourage CWSRF programs to fund these activities at not less than 20 percent of the capitalization grant.

STATEMENT OF POLICY

It is the policy of the United States Environmental Protection Agency (U.S. EPA) to encourage cost efficient investments in sustainable infrastructure that support community needs. Green infrastructure often offers affordable, environmentally suitable, long term solutions to many surface water quality problems. The 51 CWSRF programs are ideally suited to serve as sources of low or no cost financial assistance to a broad and diverse range of publicly and privately owned green infrastructure projects.

In 2009, the GPR was established by the American Recovery and Reinvestment Act (ARRA). This was the first time CWSRF programs were specifically encouraged to invest in green infrastructure. Where there are sufficient projects available, the GPR directs CWSRF programs to provide a variable percentage of financial assistance from their allotments to a range of sustainable water infrastructure projects, including green infrastructure. GPR projects such as water reuse, energy efficient equipment, and natural systems for mitigating storm surge, have helped CWSRFs to address their greatest water quality priorities, including resilience to extreme weather events. The CWSRF programs have been very successful at implementing the GPR, providing an impressive $3.8 billion in assistance to GPR projects since the Agency began reporting in 2010.

In 2010, EPA's *Sustainability Policy for Clean Water and Drinking Water Infrastructure* further encouraged CWSRF investment in green infrastructure. It was the first policy statement that explicitly highlighted "natural or green systems" as a key project alternative to consider in planning sustainable water infrastructure. The policy recognized the important role SRF programs should play in preliminary planning and alternatives assessment and in providing financing to eligible capital projects that integrate natural or green systems[2] into the built environment.

Since the inception of the GPR, CWSRFs have provided $800 million of CWSRF assistance to over 600 green infrastructure projects. This represents just 21 percent of all GPR assistance provided to date. EPA believes that by undertaking several activities to incentivize and encourage green infrastructure projects this percentage can grow. It is not the intent of this policy to reduce funding of other types of efficiency and resiliency projects. Each of these types of projects has an important role to play in supporting sustainable wastewater systems. Infrastructure planning should include the evaluation of all of these alternatives on a life cycle basis.

ACTIONS FOR EPA

EPA will work with its partners to build upon existing efforts that support funding green infrastructure, as described below.

Best Practices Guide: EPA will develop a best practices guide for funding green infrastructure in the CWSRF program. The document will highlight state practices for incentivizing green infrastructure projects, including marketing/outreach, prioritization, financial incentives, technical assistance, leveraging resources, and partnerships.

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[2] "Green systems" refer primarily to green infrastructure.

Marketing: Deploy a targeted green infrastructure marketing campaign in the SRF community with prospective recipients, nonprofits and other stakeholders that includes: the development of outreach materials, messaging and means of delivery; surveys and focus groups; and targeted networking opportunities with key stakeholder groups.

Results: EPA will track states' progress toward funding green infrastructure projects and document success stories. During the annual review, EPA will discuss progress with states, including any challenges or barriers they have faced and the types of green infrastructure projects they have funded.

Recognition: EPA will implement an annual awards program that will include recognition high quality, replicable green infrastructure projects and state programs that successfully market to and incentivize green infrastructure projects.

RECOMMENDED ACTIONS FOR CWSRFs

EPA encourages CWSRFs to implement several actions to support funding green infrastructure as described below.

Prioritization: Integrate green infrastructure into priority systems through ranking criteria and/or bonus points, as appropriate.

Marketing: Develop outreach materials; organize community meetings; and/or participate in workshops, conferences, charrettes, etc. that educate potential borrowers about the availability of CWSRF assistance for green infrastructure projects. EPA will be leading this effort in collaboration with the States.

Financial incentives: Incentivize green infrastructure projects by offering interest rate reductions, additional subsidization, or other appropriate financial incentives.

I look forward to working with you to continue promoting the use of green infrastructure practices. If you have questions about this policy, please contact Kelly Tucker at (202) 564-0608.

cc: Joel Beauvais, Deputy Assistant Administrator, Office of Water

This document provides a Statement of Policy to EPA Regions, States and the general public on how EPA intends to work with the CWSRF programs in encouraging greater use of green infrastructure in sustainable water systems. This document does not substitute for any statutory provisions or EPA regulations.

Financing Green Infrastructure:

A Best Practices Guide for the Clean Water State Revolving Fund

2015

United States Environmental Protection Agency

Clean Water State Revolving Fund

Introduction

Since 1988, EPA's Clean Water State Revolving Fund (CWSRF) has established itself as an important source of affordable funding for infrastructure projects that improve and maintain the quality of our nation's waters. Each of the 51 programs operating independently across the United States and Puerto Rico demonstrate the power of federal and state partnerships to leverage financial resources in the interest of building sustainable infrastructure and protecting public health and water quality. There is no single prescription for accomplishing these goals; infrastructure solutions must be tailored to meet the environmental and economic needs of individual communities. States have significant flexibility within the CWSRF to establish their own funding priorities, assist communities of all sizes, and address a wide range of water quality concerns.

Nationwide, there is increasing awareness and acceptance of the need to address pollution generated by stormwater runoff. EPA developed its Green Infrastructure Policy for the CWSRF in an effort to meet this challenge. Released in December of 2015, the intent of the policy is to increase CWSRF financing of green infrastructure projects and broadly encourage cost efficient investments in sustainable infrastructure. Amongst the variety of eligible projects that CWSRF programs finance, green infrastructure represents a cost-effective solution to stormwater management.

The CWSRF's Green Project Reserve (GPR) requirement also encourages investment in green infrastructure. Established under the American Recovery and Reinvestment Act (ARRA) and carried forward with subsequent appropriations, the GPR directs states to provide a variable percentage of their capitalization grants to a range of sustainable water infrastructure projects, including green infrastructure. CWSRF programs have been very successful at implementing the GPR, providing an impressive $3.8 billion in assistance to GPR projects since EPA began tracking loan level data in 2010. As part of the GPR, CWSRFs have provided $800 million to over 600 green

WHY GREEN INFRASTRUCTURE?

During rain events, stormwater can convey contaminants that severely degrade receiving waters. In cities with combined sewer systems, stormwater flows can also result in the direct discharge of untreated sewage. Green infrastructure incorporates both the natural environment and engineered systems to protect, restore, or mimic the natural water cycle. A variety of green infrastructure practices can be used to capture, treat, infiltrate, and evapotranspire stormwater runoff. These measures reduced localized flooding and provide numerous environmental benefits. Green infrastructure solutions can be applied on different scales. On the local level, green infrastructure practices include rain gardens, permeable pavements, green roofs, infiltration planters, trees and tree boxes, and rainwater harvesting systems. At the largest scale, green infrastructure preserves and restores natural landscapes such as forests, floodplains and wetlands. Operating at any scale, green infrastructure practices can provide clean water, conserve ecosystem values and functions, and provide a wide array of benefits to people and wildlife.

infrastructure projects. This represents just 21 percent of all GPR assistance provided to date. Activities that incentivize and encourage green infrastructure can potentially increase this percentage over time.

Although green infrastructure is nested within the relatively small proportion of GPR projects, states can choose from an impressive array of green infrastructure projects that are now eligible for funding under the CWSRF. The Water Resources Reform and Development Act (WRRDA) of 2014 specifically amended the CWSRF program eligibilities with respect to stormwater, authorizing each CWSRF program to provide financial assistance "for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water." This language encompasses virtually any green infrastructure project that mitigates stormwater runoff and opens a wide range of green infrastructure projects to CWSRF eligibility for both public and private borrowers.

Embracing green infrastructure eligibilities, as many CWSRF programs already have, can provide communities with significant environmental, economic, and social benefits. The difficulty lies in translating eligibilities to actual infrastructure. Communities are sometimes reluctant to pursue green infrastructure solutions due to a lack of familiarity, inability to secure a repayment source, or other logistical barriers. But interested CWSRF programs need look no further than their peers. The breadth of knowledge, experience, and the diversity of approaches to achieving environmental benefits has always been the CWRSF program's greatest asset.

This best practices guide illustrates a variety of incentives states use to encourage consideration and implementation of green infrastructure and foster sustainability within their programs. Some of the incentives and examples featured in the guide are not specific to green infrastructure, but could easily be adapted to focus on green infrastructure implementation. Likewise, many of the practices that are specific to green infrastructure can also be applied to other sustainable projects such as water and energy efficiency.

State programs have used the practices in this guide with great success. EPA is pleased to highlight these efforts in the hope that other interested programs can follow their example.

Outreach

As the water sector moves toward more sustainable approaches to managing resources and addressing infrastructure challenges it is important for communities to be aware of the full range of treatment technologies available to manage wastewater and stormwater runoff. State CWSRF programs can play a large role in fostering this awareness by encouraging stakeholders to consider the full range of project alternatives available, including green infrastructure. States should market their programs to the widest possible audience and seek to develop partnerships with entities interested in funding green infrastructure.

Marketing

For years, State CWSRF programs have been providing interested communities with funding to incorporate green infrastructure into their wastewater systems. Many communities may still be unaware of the CWSRF funding opportunities available to them. States can address this by implementing a variety of marketing practices. The table below includes examples of successful marketing strategies that states have implemented.

State	Marketing Approach
Iowa	Held a workshop for potential borrowers which led to: • development of new brochures and a reformulated Intended Use Plan (IUP) and Annual Report to serve as comprehensive documents aimed at the wider public. • hiring an environmental review coordinator who works to reduce applicant workload by taking over the federal crosscutter process.
Oklahoma	Created a Wastewater Infrastructure Planning Guide for communities to develop strategies on how to best meet their wastewater infrastructure goals.
South Carolina	Hired a full-time outreach expert that plans workshops and conducts one-on–one technical meetings with stakeholders.
Ohio	Hosts webinars for communities to ask questions about the program.
New York	Visits communities to meet local leaders and identify potential project sites.

Technical Assistance

Communities may be receptive to the idea of green infrastructure, yet still be reluctant to commit to a green infrastructure project if they are unfamiliar with planning or maintenance requirements. To mitigate these concerns, state programs can offer technical assistance to help communities conduct a thorough alternatives analysis to identify the appropriate technology, develop the project scope, or help create an operations and maintenance plan. Since some green infrastructure projects don't have a dedicated source of revenue, technical assistance can also be used to help communities identify potential repayment sources such as stormwater fees and on-bill

STATE SPOTLIGHT: OKLAHOMA

In 2014, the Oklahoma Water Resources Board (OWRB) finalized its Public Wastewater System Planning Guide. This easy-to-use document walks users through the process of inventorying existing infrastructure assets and determining upgrade, repair and replacement needs. The baseline assessment could help communities identify opportunities to implement green infrastructure and identify future funding opportunities. The guide can found at http://www.owrb.ok.gov/guides/index.php

financing. State employees can visit communities themselves or work with outside entities when offering technical assistance. They can also use administrative funds and loan fees[1] to help pay for these efforts.

EPA recently conducted a series of technical assistance projects focused on green infrastructure implementation. These projects are intended to address significant technical, regulatory, and institutional barriers to green infrastructure, and to build community capacity by sharing lessons learned. To highlight these efforts, the Green Infrastructure Team within EPA's Office of Wastewater Management is developing a guide to highlight best practices for assisting communities with green infrastructure implementation. This guide is under development and will be released in 2016. To learn more about this technical assistance program and green infrastructure at EPA go to http://water.epa.gov/infrastructure/greeninfrastructure/gi_support.cfm#2014TechnicalAssistance.

Partnerships

Partnering with other organizations is an important strategy for states to reach potential borrowers. Potential partners could include homeowners associations, conservation organizations, engineering firms, state agencies, and other entities with green infrastructure expertise. The advantage of such partnerships is these organizations already have close relationships with potential borrowers. CWSRF programs can utilize existing relationships between communities and state and local agencies which may help facilitate green infrastructure funding opportunities. Several states have used this approach to reach borrowers for non-point source projects by partnering with state agricultural offices that have an existing relationship with landowners.

Prioritization

Effectively communicating CWSRF priorities through the use of priority systems and other methods can help ensure borrowers are aware of specific funding opportunities and are submitting projects that meet state objectives. Priority systems are the primary tool that states use to rank and evaluate projects. The flexibility inherent to these systems is one of the most dynamic aspects of the CWSRF program, allowing states to pursue projects that meet their own unique economic and environmental objectives. Priority systems funnel CWSRF resources to communities of all sizes, address a wide variety of water quality concerns, and can play a critical role in encouraging the adoption of green infrastructure solutions.

Priority Points

[1] Only fee revenue that is non-program income can be used to pay for technical assistance.

State priority systems can effectively communicate water quality goals if they are transparent, with information readily available to potential assistance recipients. Priority systems should be accessible to the public and easy to locate. This allows potential borrowers to take state priorities into account when considering project alternatives. Many states post their priority systems online or include them in their intended use plans. During the planning and design phase of a project, potential assistance recipients in these states can assess their project against the priority system, making necessary adjustments to ensure the project is an attractive candidate for CWSRF funding.

States may assign additional priority points to sustainable project alternatives, including green infrastructure. The states in the table below use their priority systems to encourage sustainable project design, including specific incentives for a variety of green infrastructure practices.

State	Priority Approach
New Hampshire	20 of a possible 100 points are awarded for GPR projects. An additional 15 points are available to projects that address sustainability factors such as climate change adaptation.
Maryland	25 of a possible 100 points are available for sustainable project elements such as green infrastructure, asset management, and LEED design. While not specifically reserved for green infrastructure, additional points are available for nutrient removal and cost-effectiveness.
New Mexico	25 of a possible 475 points are awarded to projects that protect designated beneficial uses such as aquatic life. An additional 25 points are awarded to projects that incorporate structural/non-structural stormwater best management practices. 25 bonus points are awarded to projects that meet one of the four GPR categories: energy efficiency, water efficiency, green infrastructure, or environmental innovation.
Georgia	50 of a possible 100 points are available to projects that implement certain agricultural best management practices, protect stream buffer zones, and take other measures to reduce non-point source pollution. An entire section is devoted to assessing green infrastructure, non-point source, and stormwater management benefits.
Oregon	Criteria are scored between 1 and 5 with 5 points denoting very high likelihood of achieving the desired goal. Individual criteria include, but are not limited to, inclusion or expansion of sustainable project elements,, green infrastructure components, and improvement or protection of aquatic habitat.

Set-Asides

States can also prioritize by setting aside funding to specifically incentivize green infrastructure. CWSRF programs have the flexibility to reserve funding and direct it towards desirable projects. This pool of money could also be offered at a reduced interest rate as an added incentive to potential borrowers. This option should not be confused with the Drinking Water SRF set-asides, which require states to reserve a portion of their capitalization grant for specific activities or recipients identified in statute.

STATE SPOTLIGHT: CALIFORNIA

In March 2014, the California State Water Resources Control Board approved low-interest financing terms to incentivize water recycling projects, making $800 million available at 1 percent interest. Among the projects eligible for funding are recycled water treatment, distribution and storage facilities. The financing will help California reach its goal of recycling 150,000 acre-feet of water annually.

Financial Incentives

States reward high-priority projects by utilizing financial incentives. The CWSRFs have considerable flexibility in setting conditions for loan assistance, an authority that can be exceptionally helpful in financing green infrastructure projects. For example, CWSRFs can lower interest rates, provide additional subsidization, and structure repayment schedules to suit the needs of the borrower.

Interest Rates

The ability to offer competitive interest rates is one of the most attractive incentives states can offer potential assistance recipients. CWSRF interest rates vary from market rate to as low as zero percent. Most states index their interest rates to a measurement of financial capability (usually median household income), giving the lowest interest rates to the poorest communities. States may also offer additional interest rate breaks to desirable projects, including green infrastructure.

Repayment Schedules

While maturities cannot exceed 30 years or the useful life of the project, CWSRF programs can be flexible in how they structure loan repayment schedules. For example, loan repayments could start small and gradually increase over the life of the loan. Alternatively, the majority of the loan principal could be paid at the end of the term through a large balloon payment. Using these options can help make green infrastructure projects more affordable.

Additional Subsidization

Since ARRA was passed in 2009, annual appropriations authorized states to provide a portion of their capitalization grant as additional subsidization. Allowable forms of subsidy include principal forgiveness, negative interest loans, and grants. This authority to provide additional subsidization was made permanent with the passage of WRRDA in 2014. States can use this authority to target assistance to green infrastructure projects. Since 2009, states have provided more than $70 million in additional subsidization for eligible green infrastructure projects.

STATE SPOTLIGHT: NEW YORK

The New York State Environmental Facilities Corporation (EFC) uses their additional subsidy dollars to provide funding to green infrastructure projects through their Green Innovation Grant Program (GIGP). GIGP-funded projects cover eight green infrastructure practices, ranging from rain gardens to stream "daylighting" projects. Recipients receive grants covering up to 90 percent of eligible project costs and are required to provide at least 10 percent matching funds. To date, the EFC has awarded $115.3 million through GIGP to 153 projects across New York State.

Financing Mechanisms

The CWSRF's flexibility can *help borrowers overcome barriers* and more easily obtain *affordable financing for green infrastructure projects. To accomplish this goal, sstate programs have developed a number of innovative financial programs and assistance-delivery mechanisms. Such state efforts have resulted in highly beneficial options for local communities. The following discussion includes ideas on how to design and implement financing options that will help states fund green infrastructure projects and engage potential borrowers.*

Co-Funding

In addition to the CWSRF, there are a variety of funding sources to help finance green infrastructure, including the United States Department of Interior, the Department of Transportation, and state funding programs. These other funding sources offer opportunities for the CWSRF to co-fund projects. This is especially useful for large projects that cannot be entirely funded by the CWSRF, or projects with costs that are not eligible under the CWSRF but are eligible under another funding program. Another advantage of co-funding is that by partially funding projects, states can use the same funding level to assist a greater number of eligible projects.

Sponsorship

Sponsorship lending pairs a traditional publicly owned treatment works (POTW) project with a nontraditional one, such as a green infrastructure project. A municipality receives a loan with a reduced interest rate as compensation for also undertaking (i.e. sponsoring) a nontraditional project, thus allowing municipalities to address pressing watershed restoration or protection priorities without placing a repayment responsibility on green infrastructure projects. This arrangement works best when the cost of the combined project is equal to or less than the cost of a stand-alone POTW project when financed at normal CWSRF interest rates.

For example, a $1 million loan for a traditional infrastructure project at 3.8 percent interest would result in a total loan cost of $1,436,707 over a 20-year term. A $1,393,442 loan at 0.3 percent interest results in the same loan cost over 20 years. In a sponsorship scenario, the state opts to subsidize the loan interest, allowing a municipality to borrow $1 million for a traditional POTW project plus $393,442 to implement green infrastructure projects at no additional cost to the borrower. For added incentive, a CWSRF could reduce the interest rate further so the municipality would save money rather than break even.

STATE SPOTLIGHT: DELAWARE

The Delaware Department of Natural Resources and Environmental Control (DNREC) has developed an innovative financing approach to fund conservation easements and fee-simple land purchases. Annually, municipalities that have wastewater projects on the fundable portion of the project priority list can enter into sponsorship agreements to conserve forestland, open space and wetlands with implementing partners such as the Delaware Department of Agriculture's Forestland Conservation Program and Agricultural Lands Preservation Foundation, or DNREC's Open Space and Conservation Easement Programs. Funded land conservation easements and/or fee-simple land purchases must have demonstrated water quality improvement benefits and be managed in perpetuity.

Conduit Lending

Conduit lending mechanisms include pass-through loans to credit intermediaries and linked deposit loans through commercial banks. Both facilitate lending to small, nontraditional projects by CWSRF programs and are excellent tools for funding green infrastructure projects.

For pass-through loans, a CWSRF program makes a loan to a state agency or local government entity that then provides funding for eligible projects. Assistance through the intermediary can be provided to recipients in the form of loans, grants, or the purchase of debt obligations. In the case of grants, the

STATE SPOTLIGHT: IOWA

The Iowa Finance Authority (IFA) has partnered with local lending institutions and the Iowa Department of Agriculture and Land Stewardship's local Soil and Water Conservation Districts to administer their Stormwater Best Management Practices Loan Program. The program uses conduit lending to offer low-interest loans for projects to control stormwater runoff, including detention basins, grassed waterways, infiltration practices, pervious paving systems, ponds or wetland systems, soil-quality restoration, and other practices that are shown to improve or protect water quality.

intermediary is still responsible for repaying the CWSRF loan, with interest, to the state. The intermediary also assumes the credit risk and cost of administration.

Linked-deposit loans are similar to pass-through loans except the CWSRF works with a bank instead of a state agency or local government entity. Combining the lending and investment authority of the program, a CWSRF purchases a certificate of deposit (CD) or similar investment (e.g., an interest-bearing account) at a commercial bank at a reduced rate in exchange for the bank providing below-market-rate loans to borrowers. In both the pass-through and linked deposit scenarios, the risk of managing the loan is placed with the government agency partner or bank.

Conduit lending is a useful strategy for funding green infrastructure on a small scale (e.g., rain barrels at private residences and certain agricultural best management practices). This practice enables CWSRFs to fund a number of smaller projects that would otherwise be too cumbersome or costly to manage. With direct CWSRF loans, the borrower must have a dedicated source of repayment, but with conduit lending it is the government agency or bank that must secure a source of repayment. Additionally, some smaller borrowers such as homeowners may be more comfortable working with their local banks or local governments.

Guaranties

State CWSRF programs can also establish a loan guaranty program to support borrowing for green infrastructure projects. Guaranties provide additional security for local debt and allow for reduced interest rates. This is done by transferring the credit risk from private investors, who purchase bonds from local governments, to the CWSRF. Because CWSRF programs generally have very high credit ratings, local governments would be able to borrow at the most favorable market rates available. Given the relative novelty and accompanying uncertainties of many green infrastructure projects in terms of cost, performance, and repayment streams, CWSRF guaranties seem poised to play an important role in allocating credit resources to these projects.

Guaranties require a minimal outlay of CWSRF money, allowing states to stretch their CWSRF dollars even further. Guaranties could be used in combination with loans for large projects. For example, many wet weather projects are very costly, possibly exceeding the finance capacity of the CWSRF. As an alternative, the CWSRF could loan a share of the cost and guaranty the local debt issued to pay for the balance. Importantly, while there are some Internal Revenue Service restrictions on federal guaranties of tax-exempt debt, no such restriction exists for the CWSRF.

Looking Forward

The best practices discussed in this guide are not exhaustive, nor are they intended to portray the CWSRF as the only financial vehicle that can play a role in sustainable stormwater management; however, as the largest public source of water quality financing in the United States, the CWSRF program has the national reach, resources, experience, and creativity to encourage the adoption of green infrastructure and expand its use across the wastewater sector. The CWSRF is one resource among many, but it is a resource that embodies a robust and comprehensive financing toolbox with a long track record of success. In order to proactively address the challenges posed by stormwater pollution and more broadly encourage sustainability within the water sector, state programs don't need to reinvent the wheel, but can and should rely on each other to the maximum extent possible. The CWSRF program's success with respect to green infrastructure and sustainability is ongoing and states should continue to adapt their programs to meet tomorrow's challenges.

APPENDIX G

Public Review

a. Public Hearing Notice

KANSAS DEPARTMENT OF HEALTH AND ENVIORNMENT
NOTICE OF HEARING
DRAFT DOCUMENTS ARE NOW AVAILABLE FOR REVIEW AND COMMENT FOR THE FY 2017 PROJECT PRIORITY SYSTEM, PROJECT PRIORITY LIST, AND INTENDED USE PLAN FOR THE KANSAS WATER POLLUTION CONTROL REVOLVING LOAN FUND

FISCAL YEAR 2017

A public hearing to discuss and present the Draft FY 2017 Intended Use Plan, Project Priority List, and Project Priority System will be held Wednesday, May 25, 2016 at 10:00 A.M., in the Azure Room, 4th Floor, Curtis Building, 1000 SW Jackson, Topeka, Kansas.
The Kansas Department of Health and Environment - Bureau of Water has prepared the referenced documents for Fiscal Year 2016 Capitalization Grant application. The documents are available on the KDHE website at http://www.kdheks.gov/muni/index.htm . Comments on the documents are welcome and requested. Any questions should be directed by e-mail to rgeisler@kdheks.gov or by regular mail to Rodney R. Geisler, P.E., Chief, Municipal Programs Section, Bureau of Water, Kansas Department of Health and Environment, Suite 420, Curtis Building, 1000 SW Jackson, Topeka, Kansas 66612-1367, prior to the date of the hearing.

Susan Mosier, Secretary
Department of Health and Environment

b. Summary of Public Hearing –

The public hearing was held on May 25, 2016, at 10 AM in the Kansas Department of Health and Environment offices, Cottonwood Conference Room, Fourth Floor, Curtis Building, 1000 SW Jackson, Topeka, Kansas, to discuss and receive comment on the DRAFT SFY 2017 Project Priority System, Project Priority List, and Intended Use Plan (IUP) for the Kansas Water Pollution Control Revolving Loan Fund program. The documents were placed on public notice for comment for 30 days, and will be posted to the KDHE website.

Federal Grant funding to the Clean Water State Revolving Funds continues, thru FFY 2016, and $12,060,000 is available to Kansas. The future FFY 2017 federal funding is also predicted at this time to be about $8.9 M, based on the draft federal budget. For the ongoing program, additional funding for new loans is available from the sale of State Match revenue bonds, "recycled" funds, and/or the sale of additional "leveraging" bonds if needed to fund additional project costs. The KWPCRF has the financial capability to obtain an additional $90 million for new loan agreement project costs through the sale of leveraging bonds. All new loans must comply with the new federal requirements from the WRRDA legislation. The federally imposed recent changes in administering the program into the future include the American Iron and Steel (AIS) Requirements and as before, Davis/Bacon continues to apply to "treatment works" construction projects. The program is always encouraging "green design" projects as defined by EPA, and principal forgiveness funding will be discussed.

Many new projects are listed on the IUP and funding is available to all projects listed, and any new eligible projects can be added to the IUP at any time and also have funding provided.

KDHE has revised the procedures to allocate future principal forgiveness funding received from EPA, and as required by WRRDA KDHE written an Affordability Criteria document for the KWPCRF. KDHE will reconsider the use of the 10% additional subsidy that is not subject to the WRRDA restrictions.

Also, the state legislature has passed and the Governor signed legislation to allow the Kansas Water Pollution Control Revolving Fund to develop procedures and documents for a linked deposit investments financing of non-point source pollution control projects. KDHE has developed program documents which are available on the KDHE website at http://www.kdheks.gov/nps/index.html

c. Public Hearing Attendees – no one from the public attended the hearing.

d. Summary of Email and Letter Comments Received – several comments were received by email to remove or include projects, and amend the project cost estimates.

The funding application for the 2016 CW SRF Cap. Grant has been provided to EPA Region 7. KDHE has provided the required Certification for the Attorney General, and the application includes submittal of the Final 2017 Intended Use Plan, Project Priority System, and Project Priority List.

APPENDIX H

Estimated Service Fee Income from the FFY 2016 Capitalization Grant

Est. Program Income Earned During the Grant Period – 07/01/16 – 06/30/22 - $86,000

Est. Program Income Earned After the Grant Period – 07/01/22 – 06/30/37 - $230,000

Est. Non-Program Income Earned From the FFY 2016 Capitalization Grant - $0

Prepared by
Rod Geisler
4/12/16

K.A.R. 28-16-113 establishes the method of the KWPCRF to collect service fees for administration costs of the KWPCRF. A portion of the interest rate charges of the loans, 0.25%, is collected as a service fee. The (gross) interest rates on the loans are established in accordance with K.A.R. 28-16-133.

Program Administration funds are provided by the 4% 603(d)(7) set aside of the CW SRF capitalization grant amount. These funds can only be used in the direct support of the KWPCRF program management. These funds are spent primarily on staff salaries and benefits, but are also spent on various expenses. These include such typical expenses as travel, rent, office supplies, communications, costs incurred by other state agencies under the IAA, and the annual independent financial audits.

Service fees income funds are collected as provided in K.A.R. 28-16-113. EPA policies dictate service fees are divided into three categories of “program income” and “non-program income”. “Program income earned during the grant period” are service fees that must be spent in support of the KWPCRF program management. “Program income earned after the grant period” should first be spent in support of the KWPCRF program management, but can also be spent in support of the “Water Quality Related” expenses, such as the “106 Program” NPDES permit program activities, if adequate funds are first provided for KWPCRF program management. “Non-program income” can be spent in support of other “Water Quality Related” expenses, such as the “106 Program” NPDES permit program activities.

In Kansas, KWPCRF non-program income service fees are spent in support of “Water Quality Related” activities in support of the 106 Program NPDES permit program activities. These include such typical expenses as salaries and benefits, travel, rent, office supplies and equipment, communications, technical and financial association fees and conferences, and technical assistance contracts.

All KWPCRF service fees for any expense are reviewed by the KWPCRF program management staff. In accordance with the advice provided several years ago by the auditors conducting the Independent Financial Audit, monthly reports of service fee expense expenditures charged to Program Administration and to KWPCRF Service Fees are extracted and reviewed. This review

is to assure any expense is properly assigned to be paid by KWPCRF service fees, and/or also properly assigned as a KWPCRF expense spent in support of the KWPCRF program management or as a Water Quality Related 106 Program NPDES expense.

The WRRDA legislation has provided other options for the states to establish Service Fee Income from the Clean Water SRF programs. At this time, Kansas will continue to establish and utilize KWPCRF service fees in the established manner as presented above.

Appendix I

Project Priority List
(by reference, available at http://www.kdheks.gov/muni/index.htm)

Appendix J

Project Priority System
(by reference, available at http://www.kdheks.gov/muni/index.htm)

Appendix K

KWPCRF Project Application Packet System
(by reference, available at http://www.kdheks.gov/muni/index.htm)

Appendix L

2014 Buy American Iron and Steel (AIS) Policies and Procedures from EPA

EPA Memo “Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014” dated March 20, 2014

Additional information available at

http://water.epa.gov/grants_funding/aisrequirement.cfm

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 20 2014

OFFICE OF WATER

MEMORANDUM

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76, Consolidated Appropriations Act, 2014

FROM: For Andrew D. Sawyers, Director
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an "American Iron and Steel (AIS)" requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.

Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term ''iron and steel products'' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the ''Administrator'') finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

Project Coverage

1) What classes of projects are covered by the AIS requirement?

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

8) What if a project has split funding from a non-SRF source?

Many States intend to fund projects with "split" funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A "project" consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

9) What about refinancing?

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12)

<u>Covered Iron and Steel Products</u>

11) What is an iron or steel product?

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

Lined or unlined pipes or fittings;
Manhole Covers;
Municipal Castings (defined in more detail below);
Hydrants;
Tanks;
Flanges;
Pipe clamps and restraints;
Valves;
Structural steel (defined in more detail below);
Reinforced precast concrete; and
Construction materials (defined in more detail below).

12) What does the term 'primarily iron or steel' mean?

'Primarily iron or steel' places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

13) Can you provide an example of how to perform a cost determination?

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

15) What is the definition of steel?

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

16) What does 'produced in the United States' mean?

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

17) Are the raw materials used in the production of iron or steel required to come from US sources?

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

19) What is the definition of 'municipal castings'?

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

Access Hatches;
Ballast Screen;
Benches (Iron or Steel);
Bollards;
Cast Bases;
Cast Iron Hinged Hatches, Square and Rectangular;
Cast Iron Riser Rings;
Catch Basin Inlet;
Cleanout/Monument Boxes;
Construction Covers and Frames;
Curb and Corner Guards;
Curb Openings;
Detectable Warning Plates;
Downspout Shoes (Boot, Inlet);
Drainage Grates, Frames and Curb Inlets;
Inlets;
Junction Boxes;
Lampposts;
Manhole Covers, Rings and Frames, Risers;

Meter Boxes;
Service Boxes;
Steel Hinged Hatches, Square and Rectangular;
Steel Riser Rings;
Trash receptacles;
Tree Grates;
Tree Guards;
Trench Grates; and
Valve Boxes, Covers and Risers.

20) What is 'structural steel'?

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

21) What is a 'construction material' for purposes of the AIS requirement?

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered "structural steel". This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

22) What is not considered a 'construction material' for purposes of the AIS requirement?

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

Compliance

25) How should an assistance recipient document compliance with the AIS requirement?

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,

processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

26) How should a State ensure assistance recipients are complying with the AIS requirement?

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or OIG_Hotline@epa.gov. More information can be found at this website: http://www.epa.gov/oig/hotline.htm.

28) How do international trade agreements affect the implementation of the AIS requirements?

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

Waiver Process

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

Definitions

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: cwsrfwaiver@epa.gov. For DWSRF waiver requests, please send the application to: dwsrfwaiver@epa.gov.

Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA's website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: http://water.epa.gov/grants_funding/aisrequirement.cfm

2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at dorfman.jordan@epa.gov or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at anderer.kirsten@epa.gov or (202) 564-3134.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
General • Waiver request includes the following information: — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor		
Cost Waiver Requests • Waiver request includes the following information: — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products — Relevant excerpts from the bid documents used by the contractors to complete the comparison — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers		
Availability Waiver Requests • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?		

Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost Waiver Requests • Does the waiver request include the following information? — Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products				
— Relevant excerpts from the bid documents used by the contractors to complete the comparison				
— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market				
• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?				
Availability Waiver Requests • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested? — Supplier information or other documentation indicating availability/delivery date for materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials				
• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?				
• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)				
• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the materials				
• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?				

Appendix 3: Example Loan Agreement Language

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, 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 Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant 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 Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/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.

Appendix 4: Sample Construction Contract Language

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of _____ ("Purchaser") and the _____ (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contactor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 5: Sample Certifications

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

Such process took place at the following location:

_____

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxxx
2. Xxxx
3. Xxxx

Such process took place at the following location:

_____

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix M

Clean Water SRF WRRDA Guidance Final 1-06-15 (Final Interpretive Guidance)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 06 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act

FROM: Andrew D. Sawyers, Ph.D., Director
Office of Wastewater Management (4201M)

TO: Water Management Division Directors
Regions I-X

The purpose of this memorandum is to follow up on the initial interpretive guidance issued on September 18, 2014 with additional supplemental information on section 602(b)(13). The guidance also has several appendices, including a set of questions and answers. Please distribute to your respective States as soon as possible.

Next year, we will be holding a series of training sessions in each Region for EPA and State Clean Water State Revolving Fund staff. The sessions will focus in part on the opportunities offered by the amendments, particularly with respect to project planning and eligibilities.

Again, I would like to express my appreciation to the Regions and States for your helpful comments in drafting the guidance and making possible its timely issuance. Inquiries regarding the guidance should be directed to Kelly Tucker (202/564-0608) or Emily Nicasio (202/564-9920).

Attachment

Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V and VI of the Federal Water Pollution Control Act

Clean Water
State Revolving Fund

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Background

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014 (WRRDA). Among its provisions are amendments to Titles I, II, V, and VI of the Federal Water Pollution Control Act (FWPCA). Interpretive guidance was issued on September 18, 2014 for those provisions affecting the Clean Water State Revolving Fund (CWSRF) program. This document includes additional supplemental information on section 602(b)(13), as well as several appendices and a set of questions and answers.

Subtitle A: Amended Provisions in Title VI

Sec. 5001. General Authority for Capitalization Grants (Section 601)

Section 601(a)
As amended, the FWPCA section 601(a) now states:

> *(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund to accomplish the objectives, goals, and policies of this Act by providing assistance for projects and activities identified in section 603(c).*

The FWPCA section 601(a) incorporates the expanded list of activities or projects identified in 603(c) as eligible for assistance from a CWSRF. States should make certain when selecting projects for funding that the purpose of the project is consistent with the objectives, goals, and policies of the FWPCA.

Section 5002. Capitalization Grant Agreements (Section 602)

Section 602(b)(6)
As amended, the FWPCA section 602(b)(6) now states:

> *(6) treatment works eligible under this Act which will be constructed in whole or in part with assistance made available by a State water pollution control revolving fund authorized under this title, or section 205(m) of this Act, or both, will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 511(c)(1) and 513 of this Act in the same manner as treatment works constructed with assistance under title II of this Act;*

The FWPCA section 511(c)(1) applies the National Environmental Policy Act (NEPA) to assistance for the construction of treatment works. The FWPCA section 513 is a prevailing wage provision that requires all laborers and mechanics employed by contractors working on treatment works to be paid prevailing wages as determined by the Secretary of Labor. It is considered a Davis-Bacon related Act.

National Environmental Policy Act Provision
All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding (e.g., prior years' appropriations, state match, bond proceeds, interest earnings, principal repayments, etc.), must undergo an environmental review. The Environmental Protection Agency (EPA) has consistently interpreted the statement "with assistance made available by a State water pollution control revolving fund authorized under this title" to mean that the specific requirement identified applies to all CWSRF-funded projects, not just equivalency projects. Consistent with this prior interpretation, any project that is considered a "treatment work" as defined in the FWPCA section 212, now incorporated in FWPCA Section 502(26), must comply with the FWPCA 511(c)(1) regardless of which eligibility it is funded under (*see section 603(c)*).

A State may choose to apply its own "NEPA-like" State environmental review process for complying with the FWPCA section 511(c)(1) provided that the elements in 40 CFR 35.3140(b)(1) through (5) are met.

Davis-Bacon Related Act Provision
The FWPCA section 602(b)(6) permanently applies the prevailing wage (Davis-Bacon) provision of the FWPCA section 513 to any projects for treatment works that are funded by a CWSRF. Consistent with EPA's prior implementation of this provision, application of the Davis-Bacon Act requirements extend not only to assistance agreements funded with capitalization grants, but to all CWSRF-funded projects involving the construction of treatment works regardless of the source of the funding (e.g., prior years' appropriations, state match, bond proceeds, interest earnings, principal repayments, etc.). Any project that is considered a "treatment work" as defined in the FWPCA section 212, now incorporated in FWPCA Section 502(26), must comply with the FWPCA 513, regardless of which eligibility it is funded under (*see section 603(c)*).

<u>Section 602(b)(9)</u>
As amended, the FWPCA section 602(b)(9) now states:

> *(9) the State will require as a condition of making a loan or providing other assistance, as described in section 603(d) of this Act, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets;*

The State must require assistance recipients to maintain project accounts according to Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB). This provision requires assistance recipients to use standards relating to the reporting of infrastructure assets. The most recent applicable standard is GASB Statement No. 34 (GASB 34), issued in June 1999, which details governmental reporting requirements including standards for reporting of infrastructure assets.[1] Further details on the requirements, as well as the full text of GASB 34, can be obtained through the GASB.

[1] Assistance recipients that follow GAAP standards other than GASB 34 are still required to maintain project accounts according to GAAP and apply GAAP standards for reporting on infrastructure assets.

The State must include language in assistance agreements requiring that recipients' project accounts are GAAP compliant, including GAAP requirements relating to the reporting of infrastructure assets. The State should consult with their State Auditor or equivalent entity to determine whether or not existing CWSRF assistance agreement language meets these requirements. Because of the effective date of GASB 34, the State may find that these requirements are already in place.

Section 602(b)(11)

As amended, the FWPCA now includes section 602(b)(11), which states:

> *(11) the State will establish, maintain, invest, and credit the fund with repayments, such that the fund balance will be available in perpetuity for activities under this Act;*

This provision requires States to manage CWSRFs in such a way that the funds will be available in perpetuity for activities under the FWPCA. The language provides specific authority for States to "invest" funds so that the fund balance will be available in perpetuity.

Section 602(b)(12)

As amended, the FWPCA now includes section 602(b)(12), which states:

> (12) *any fees charged by the State to recipients of assistance that are considered program income will be used for the purpose of financing the cost of administering the fund or financing projects or activities eligible for assistance from the fund;*

Fees considered to be program income may be deposited into the fund and used for administration and other activities eligible for assistance from the fund (i.e., loans, refinancing, insurance, guarantees, etc.). Program income is defined in 40 CFR 31.25(b) as "gross income received by the grantee or subgrantee directly generated by a grant support activity, or earned only as a result of the grant agreement during the grant period." In the CWSRF program, grant supported activities are those activities funded in an amount equal to the amount of the capitalization grant (i.e., funds directly made available by the capitalization grant). Only fees earned during the grant period from projects directly made available by the capitalization grant (equivalency projects) are program income. The grant period starts with the awarding of the grant and is considered closed once all funds have been disbursed. Fees collected after all funds are disbursed are no longer program income and may be used for water quality purposes.

Fees deposited into the fund may not be used for State match; however, if fees considered as program income are held outside the CWSRF, they may be used for State match in addition to administration and other activities eligible for assistance from the fund.

If program income generated through fees is added to the fund and used for administration, those fees are not considered part of the limit on administrative costs (*see section 603(d)(7)*).

Section 602(b)(13)

As amended, the FWPCA now includes section 602(b)(13), which states:

> *(13) beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or intermunicipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient—*
>
> > *(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and*
> > *(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—*
> >
> > > *(i) the cost of constructing the project or activity;*
> > > *(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and*
> > > *(iii) the cost of replacing the project or activity;*

Under the FWPCA section 602(b)(13), Clean Water State Revolving Fund (CWSRF) programs must require all assistance recipients meeting the definition of municipality or intermunicipal, interstate, or State agency to certify that they have conducted the studies and evaluations described in 602(b)(13)(A) and (B), herein referred to collectively as a cost and effectiveness analysis. A cost and effectiveness analysis is an eligible cost, and CWSRFs can provide assistance for planning and/or engineering activities that involve this analysis; however, the certification must be provided before CWSRF assistance is provided for final design or construction. If planning, design, and construction activities are combined into one assistance agreement, the agreement must be conditioned such that the certification is provided before an assistance recipient is allowed to proceed with final design or construction. This provision applies to all types of assistance provided to the public entities described above for which the recipient submits an application[2] on or after October 1, 2015.

The statute requires that a cost and effectiveness analysis involve, at a minimum:

- the study and evaluation of the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
- the selection, to the maximum extent practicable, of a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—
  - the cost of constructing the project or activity;
  - the cost of operating and maintaining the project or activity over the life of the project or activity; and
  - the cost of replacing the project or activity.

[2] States will determine what constitutes an application and must be consistent.

Each CWSRF program must ensure that assistance recipients complete a cost and effectiveness analysis that meets these minimum requirements. As a best practice, it is recommended that each CWSRF program develop specific criteria and/or guidance for an analysis that meets these minimum requirements. States may consider creating tiered requirements that scale the complexity of the analysis to the size of the project and/or the assistance recipient (e.g., population of a municipality or millions of gallons treated for a utility). States may also consider recognizing within the certification process how certain categories of projects, such as purchasing land and planting trees, are handled.

The State has the discretion to decide how an assistance recipient will certify that it has completed the required cost and effectiveness analysis and that it has selected, to the maximum extent practicable, a project or activity that maximizes the potential for water and energy conservation, as appropriate. A CWSRF must have a consistent process/procedure in place for ensuring compliance with the requirement, and it is recommended that the CWSRF obtain the certification in writing (e.g., a professional engineer's certification or a report with a professional engineer's seal). As a best practice, it is recommended that CWSRFs also review the cost and effectiveness analysis for selected projects, particularly if paid for by the CWSRF.

Section 602(b)(14)

As amended, the FWPCA now includes section 602(b)(14), which states:

> *(14) a contract to be carried out using funds directly made available by a capitalization grant under this title for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement (as determined by the Governor of the State).*

For any capitalization grant awarded after October 1, 2014, the State must ensure that all architectural and engineering (A/E)[3] contracts for projects identified as using funds "directly made available by" a capitalization grant (i.e. equivalency projects) comply with the elements of the procurement processes for A/E services as identified in 40 U.S.C. 1101 *et seq.*, or an equivalent State requirement. New solicitations, significant contractual amendments,[4] and contract renewals initiated on or after the effective date of October 1, 2014 are subject to this requirement.

To the extent possible, the State should identify all equivalency projects in its Intended Use Plan (IUP). The State should also identify all equivalency projects in its Annual Report and specify whether those projects include any A/E services. Only the SRF-funded contracts for A/E services associated with equivalency projects must comply with this requirement.

---

[3] Applies to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or A/E services as defined in 40 U.S.C. 1102(2)(A-C).

[4] States shall determine what constitutes a significant amendment using best professional judgment to analyze increases to both scope and cost of work.

The State should also detail in its IUP or Operating Agreement whether it intends to satisfy this requirement through compliance with 40 U.S.C. 1101 *et seq.* or through an equivalent State requirement. In the case of the latter, the source of the requirement (e.g., existing State legislation or regulation, etc.) must be stated, and a certification from the Governor of the State that the State's A/E procurement requirements are equivalent to 40 U.S.C. 1101 *et seq*. must accompany the capitalization grant application. In lieu of a certification from the Governor, the Attorney General's certification submitted with each capitalization grant application may include this certification. The requirements of 40 U.S.C. 1101 *et seq.* are:

- Public announcement of the solicitation (e.g., a Request for Qualifications);
- Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation);
    - Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);
- Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;
- Selection of at least three firms considered to be the most highly qualified to provide the services required; and
- Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered;
    - In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.

In the event that the State has no existing equivalent qualifications-based requirement for procurement, the federal requirements in 40 U.S.C. *et seq.* apply.

Section 5003. Water Pollution Control Revolving Funds (Section 603)

Section 603(c)

As amended, the FWPCA section 603(c) now states:

> *(c) Projects and Activities Eligible for Assistance.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance—*

The FWPCA section 603(c) provides the project types eligible for CWSRF assistance. Each of the eleven project types is an independent eligibility with its own criteria and requirements. Treatment works projects, as defined in the FWPCA section 212, now incorporated in FWPCA Section 502(26), are subject to the following three requirements, regardless of which eligibility they are funded under:

- the State must agree to conduct an environmental review of the potential environmental impacts of all treatment works projects;
- the State must apply the prevailing wage provision (Davis-Bacon) to all treatment works projects; and
- the State must apply American Iron and Steel (AIS) to all treatment works projects.

<u>Section 603(c)(1-3)</u>
The FWPCA section 603(c)(1-3) states:

> *(1) to any municipality or intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in Section 212);*
> *(2) for the implementation of a management program established under section 319;*
> *(3) for development and implementation of a conservation and management plan under section 320;*

The projects eligible for assistance under the FWPCA sections 603(c)(1), 603(c)(2), and 603(c)(3) remain unchanged.

<u>Section 603(c)(4)</u>
As amended, the FWPCA now includes section 603(c)(4), which states that each CWSRF may provide financial assistance:

> *(4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;*

Publicly and privately owned decentralized wastewater treatment projects are eligible. Eligible projects include, but are not limited to, the construction of new decentralized systems (e.g., individual onsite systems and cluster systems), as well as the upgrade, repair, or replacement of existing systems.

<u>Section 603(c)(5)</u>
As amended, the FWPCA now includes section 603(c)(5), which states that each CWSRF may provide financial assistance:

> (5) *for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;*

Publicly and privately owned, permitted and unpermitted projects that manage, reduce, treat, or recapture stormwater or subsurface drainage water are eligible. This language eliminates ownership constraints on regulated stormwater projects. For example, projects that are

specifically required by a Municipal Separate Storm Sewer System (MS4) permit are now eligible, regardless of ownership. Projects may include, but are not limited to green roofs, rain gardens, roadside plantings, porous pavement, and rainwater harvesting.

Section 603(c)(6)

As amended, the FWPCA now includes section 603(c)(6), which states that each CWSRF may provide financial assistance:

> (6) *to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;*

Assistance for water conservation, efficiency, or reuse may be provided to municipalities, intermunicipal, or State agencies. Only the specified public entities are eligible for assistance; however, project activities may take place at publicly or privately owned properties, provided the project reduces demand for publicly owned treatment works (POTW) capacity. For example, a city may receive CWSRF assistance to make loans or grants to city residents for the installation of water efficient appliances. Other eligible projects include, but are not limited to, the installation, replacement, or upgrade of water meters; plumbing fixture retrofits or replacement; and gray water recycling. Water audits and water conservation plans are also eligible. Equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems) is eligible.

Section 603(c)(7)

As amended, the FWPCA now includes section 603(c)(7), which states that each CWSRF may provide financial assistance:

> (7) *for the development and implementation of watershed projects meeting the criteria set forth in section 122;*

Projects that develop or implement a watershed pilot project related to at least one of the six areas identified in section 122 are eligible: watershed management of wet weather discharges, stormwater best management practices, watershed partnerships, integrated water resource planning, municipality-wide stormwater management planning, or increased resilience of treatment works. Assistance recipients may be public or private entities.

Section 603(c)(8)

As amended, the FWPCA now includes section 603(c)(8), which states that each CWSRF may provide financial assistance:

> (8) *to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;*

Projects to reduce the energy consumption needs for POTWs are eligible. Only the specified public entities are eligible for assistance; however, project activities may take place at public or private properties, provided the project reduces the energy consumption needs for a POTW. Projects may include, but are not limited to, the installation of energy efficient lighting, HVAC,

process equipment, and electronic equipment and systems at POTWs. Planning activities, such as energy audits and optimization studies are also eligible.

Section 603(c)(9)

As amended, the FWPCA now includes section 603(c)(9), which states that each CWSRF may provide financial assistance:

> (9) *for reusing or recycling wastewater, stormwater, or subsurface drainage water;*

Projects involving the reuse or recycling of wastewater, stormwater, or subsurface drainage water are eligible. This includes, as part of a reuse project, the purchase and installation of treatment equipment sufficient to meet reuse standards. Other eligible projects include, but are not limited to, distribution systems to support effluent reuse, including piping the effluent on the property of a private consumer, recharge transmission lines, injection wells, and equipment to reuse effluent (e.g., gray water, condensate, and wastewater effluent reuse systems). Eligible recipients may be public or private entities.

Section 603(c)(10)

As amended, the FWPCA now includes section 603(c)(10), which states that each CWSRF may provide financial assistance:

> (10) *for measures to increase the security of publicly owned treatment works;*

Security measures for publicly-owned treatment works might include, but are not limited to: vulnerability assessments, contingency/emergency response plans, fencing, security cameras/lighting, motion detectors, redundancy (systems and power), secure chemical and fuel storage, lab equipment, securing large sanitary sewers, and tamper-proof manholes. The CWSRF cannot fund operations and maintenance (O&M) activities. Therefore, maintaining a human presence (i.e. security guards) and monitoring activities are not eligible.

Section 603(c)(11)

As amended, the FWPCA now includes section 603(c)(11), which states that each CWSRF may provide financial assistance:

> (11) *to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works*
>
> > *(A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and*
> >
> > *(B) to assist such treatment works in achieving compliance with this Act.*

Projects to provide assistance to small and medium POTWs are eligible. The definition of small and medium POTWs shall be determined by the State. Assistance recipients must be a nonprofit entity. A nonprofit entity is one which has Federal tax-exempt status. The CWSRF cannot fund ongoing O&M activities; however, planning and design costs for capital projects, as well as

broader water quality planning projects, are eligible. The development and initial implementation of training activities are also eligible.

Section 603(d)(1)(A)&(B)

As amended, the FWPCA section 603(d)(1)(A)&(B) now states:

> *(d) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—*
>
> *(1) to make loans, on the condition that—*
>
> *(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with proceeds of the loan;*
>
> *(B) annual principal and interest payments will commence not later than one year after completion of any project and loans will be fully amortized upon the expiration of the term of the loan;*

Loan terms may extend up to 30 years, but must not exceed the useful life of the project. Existing CWSRF loans may be restructured to reflect the change to loan terms. For example, an existing 20 year loan with 10 years left to maturity could be restructured to add another 10 years to the maturity date provided the useful life of the project is 30 years or more. For a CWSRF project that has multiple components each with a different useful life, the State may use a weighted average of the components in determining the useful life of the project.

Section 603(d)(1)(E)

As amended, the FWPCA now includes section 603(d)(1)(E), which states:

> *(E) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall—*
>
> *(i) develop and implement a fiscal sustainability plan that includes—*
>
> *(I) an inventory of critical assets that are a part of the treatment works;*
>
> *(II) an evaluation of the condition and performance of inventoried assets or asset groupings;*
>
> *(III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and*
>
> *(IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or*
>
> *(ii) certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);*

The FWPCA section 603(d)(1)(E) requires a recipient of a loan for a project that involves the repair, replacement, or expansion[5] of a publicly owned treatment works to develop and

[5] FSPs are not required for new treatment works (unless they are physically replacing an existing treatment works or expanding the treatment capacity of an existing system) or for projects involving an upgrade that does not involve repair/replacement or expand the treatment capacity (e.g., adding advanced treatment).

implement a fiscal sustainability plan (FSP) or certify that it has developed and implemented such a plan. This provision applies to all loans for which the borrower submitted an application[6] on or after October 1, 2014.

FSPs should be treated as "living documents" that are regularly reviewed, revised, expanded, and implemented as an integral part of the operation and management of the system. From this perspective, there may be no final deadline for the completion of an FSP; however, it is necessary to set a date for submission of an FSP certification in order to ensure compliance with this provision. An FSP certification is a certification by the borrower that the FSP has been developed and is being implemented. For systems that self-certify under the FWPCA section 603(d)(1)(E)(ii), certification is due at the time of loan closing. For systems developing an FSP under the FWPCA section 603(d)(1)(E)(i), the requirement to develop and implement an FSP must be a condition of the loan agreement, which must also specify when the FSP certification is due. CWSRF programs may establish a program-wide deadline or a unique deadline for each project relative to the borrower's size, ability, and experience with fiscal sustainability planning. It is recommended that CWSRFs require borrowers to submit the FSP certification before the final disbursement is approved.

The statute requires that FSPs include, at a minimum:

- an inventory of critical assets that are part of the treatment works;
- an evaluation of the condition and performance of inventoried assets or asset groupings;
- a certification that the assistance recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
- a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.

Each CWSRF program must develop specific criteria for the contents of the FSP that meet these minimum requirements (*see Appendix I for energy and water conservation resources*). CWSRFs may consider allowing recipients to take a phased approach such that the initial FSP covers only the funded project and closely associated components.[7] This approach should be applied in such a way that a comprehensive and cohesive plan that covers the entire treatment works eventually results as the utility continues to repair, replace, and expand the system. States may also consider creating tiered requirements that scale the level of complexity of the FSP to the size of the municipality or utility (e.g., population served, millions of gallons treated, etc.).

At a minimum, CWSRFs must require loan recipients to certify that an FSP has been developed and is being implemented and, if deemed necessary, review the FSP. Such a review could occur during an on-site project evaluation; CWSRFs are not required to collect FSPs, but could document this review process with a memorandum to the file, a letter to the loan recipient, or an

[6] States will determine what constitutes an application and must be consistent.

[7] The treatment works should be broken down into logical sections using best professional judgment. For a sewer rehabilitation or replacement project, for example, it may be appropriate to segment a large collection system into areas or zones and create an FSP for the affected area only. On the other hand, for a small system it may be more appropriate to create a plan that covers the entire collection system.

evaluation form (e.g., a checklist). An FSP review could include the following elements: ensure the loan recipient developed an FSP, that the FSP has an appropriate level of depth and complexity, and that the recipient is implementing the FSP. Regarding the water and energy efficiency provision, CWSRFs should ensure the statutorily required certification is included in the FSP. It is recommended that the CWSRFs also evaluate whether the recipient has incorporated, to the maximum extent practicable, water and energy efficient approaches into the funded project.

Development of an FSP is an eligible cost. It is recommended that CWSRFs review and accept any FSP developed as a condition of the loan or paid for by the CWSRF, including cases of self-certification where the loan recipient is reimbursed for the cost of developing the equivalent plan. As a best practice, EPA encourages CWSRFs to review all FSPs during the final inspections.

Section 603(d)(7)

As amended, the FWPCA section 603(d)(7) now states:

> *(7) for the reasonable costs of administering the fund and conducting activities under this title, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this title, $400,000 per year, or 1/5 percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the State for such purpose regardless of the source.*

The maximum annual amount of CWSRF money (not including any fees collected that are placed in the fund) that may be used to cover the reasonable costs of administering the fund is the greatest of the following:

- an amount equal to 4 percent of all grant awards received by a State CWSRF less any amounts that have been used in previous years to cover administrative expenses;
- $400,000; or
- 1/5 percent of the current valuation of the fund.

The current valuation of the fund must be a representation of the equity of the CWSRF that properly takes into account its assets and liabilities. This valuation needs to be verifiable and consistent across the States; therefore, this calculation must be based on the most recent audited financial statements of the CWSRF and must reflect the "Total Net Position," which is defined by the GASB as the difference between (a) assets and deferred outflows of resources and (b) liabilities and deferred inflows of resources.[8] If the "Total Net Position" cannot be derived from audited CWSRF financial statements, a State may still provide a calculation of the current valuation of the fund. However, an auditor must certify that this calculation is accurate and consistent with the definition of "Total Net Position." The EPA will periodically review and update the definition of the current valuation of the fund to reflect future updates by the GASB.

[8] For more information, please refer to *Statement No. 63 Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position* and other relevant GASB pronouncements.

Any fees deposited in the fund and used by a State to pay for administering the fund or conducting activities under this title will not count against the maximum amount of CWSRF money that may be used for such purposes.

Section 603(i)

As amended, the FWPCA now includes section 603(i), which states:

(i) ADDITIONAL SUBSIDIZATION.—

(1) IN GENERAL.—In any case in which a State provides assistance to a municipality or intermunicipal, interstate, or State agency under subsection (d), the State may provide additional subsidization, including forgiveness of principal and negative interest loans—

(A) to benefit a municipality that—

(i) meets the affordability criteria of the State established under paragraph (2); or

(ii) does not meet the affordability criteria of the State if the recipient—

(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;

(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and

(III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or

(B) to implement a process, material, technique, or technology—

(i) to address water-efficiency goals;

(ii) to address energy-efficiency goals;

(iii) to mitigate stormwater runoff; or

(iv) to encourage sustainable project planning, design, and construction.

(2) AFFORDABILITY CRITERIA.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identifying municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

(ii) CONTENTS.—The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or

activity is to be carried out in an economically distressed area, as described in section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161).

(B) EXISTING CRITERIA.—If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—

(i) the State may use the criteria for the purposes of this subsection; and

(ii) those criteria shall be treated as affordability criteria established under this paragraph.

(C) INFORMATION TO ASSIST STATES.—The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).

(3) LIMITATIONS.—

(A) IN GENERAL.—A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this title for the fiscal year exceeds $1,000,000,000.

(B) ADDITIONAL LIMITATION.—

(i) GENERAL RULE.—Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this title for a fiscal year for providing additional subsidization under this subsection.

(ii) EXCEPTION.—If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this title exceeds $1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

(C) APPLICABILITY.—The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this title for fiscal years beginning after September 30, 2014.

(D) CONSIDERATION.—If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 602(b)(5) into consideration.

The FWPCA section 603(i) provides a CWSRF with the permanent authority to provide a certain percentage of its total capitalization grant award as additional subsidization under the circumstances outlined in the statute. This authority only applies to capitalization grants made from the FY 2015 and later appropriations; it does not impact any capitalization grant made from the FY 2014 or prior appropriations. Going forward, there is no minimum additional subsidy requirement that CWSRFs must comply with, but CWSRFs that have not met the additional subsidy requirements from previous capitalization grants must still meet those requirements. Any additional subsidization provided from previous capitalization grants is not subject to the restrictions outlined in the WRRDA statute and may still be provided to any eligible recipient of CWSRF assistance.

The maximum percentage that may be provided as additional subsidization will range from 0 percent to 30 percent based on the amount of the total appropriation as follows:[9]

- total appropriation less than or equal to $1 billion: no additional subsidy authorized;
- total appropriation greater than or equal to $1.3 billion: additional subsidy up to 30 percent of the capitalization grant authorized;
- total appropriation greater than $1 billion, but less than $1.3 billon: a percentage equal to the percentage by which the appropriation exceeds $1 billion authorized. For example, if the total annual appropriation is $1.1 billion, the total amount of additional subsidization available for all States would be $110 million, with each CWSRF able to provide up to 10 percent of its total capitalization grant as additional subsidization.

A CWSRF may only provide additional subsidization to a municipality or intermunicipal, interstate, or State agency; however, eligible recipients of a principal forgiveness or negative interest loan may use a "pass through" loan structure to pass the subsidy along to any eligible recipient of CWSRF assistance for projects that would otherwise be eligible to receive additional subsidization under this subsection, including non-profits and other private entities. This flexibility cannot be extended to additional subsidization that has been provided as a grant.

Additional subsidization may only be provided to eligible recipients for the following:

- to benefit a municipality that meets the State's affordability criteria as established under the FWPCA section 603(i)(2);[10]
- to benefit a municipality that does not meet the State's affordability criteria but seeks additional subsidization to benefit individual ratepayers in the residential user rate class;[11] or
- to implement a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, design, and construction.

The FWPCA section 603(i)(2) requires States to develop affordability criteria that will assist them in identifying applicants that would have difficulty financing projects without additional subsidization. Criteria must be established by September 30, 2015 after providing notice and an opportunity for public comment.

[9] For additional information, please refer to the chart provided in Appendix II.
[10] If a State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency that meets the criteria under the FWPCA section 603(i)(1)(A), the State must consider first using all funds in the fund as a result of capitalization grants to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this Act, including the municipal compliance deadline, as set forth in section 602(b)(5).
[11] Ibid.

The FWPCA section 603(i)(2)(A) requires that criteria be based on:

- income;
- unemployment data;
- population trends; and
- other data determined relevant by the State.

Income, unemployment data, and population trends must be reflected in State affordability criteria; however, the statute does not prescribe the weight that must be given to each type of criteria. States have the flexibility to determine which of the required criteria are most relevant to their CWSRF programs and may structure their program's criteria accordingly.

If CWSRFs have existing affordability criteria that meet the requirements established in section 603(i)(2)(A), they may continue to use those criteria. Existing criteria must also have undergone the appropriate public notice and comment process within their respective States.

If additional subsidization is being used to benefit individual ratepayers in the residential user rate class of a municipality that does not meet the affordability criteria, then the recipient must demonstrate to the CWSRF's satisfaction that these ratepayers would otherwise experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is being sought. Additionally, the assistance agreement between the CWSRF and the recipient must include language indicating that the additional subsidization would be provided to these ratepayers through a user charge rate system or other appropriate method.

Additional subsidization may be provided in the form of principal forgiveness, negative interest loans, or grants. However, additional subsidization provided in the form of grants must comply with certain Federal laws, Executive Orders, and Office of Management and Budget Circulars. A detailed description of these laws, orders, and implementing regulations is available through the Office of Grants and Debarment website at http://www.epa.gov/ogd/grants/regulations.htm.[12]

Section 5004. American Iron and Steel (Section 608)

Section 608

As amended, the FWPCA now includes section 608, which states:

> *SEC. 608. REQUIREMENTS.*
> *(a) IN GENERAL.—Funds made available from a State water pollution control revolving fund established under this title may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.*
> *(b) DEFINITION OF IRON AND STEEL PRODUCTS.—In this section, the term `iron and steel products' means the following products made primarily of iron or steel: lined or*

[12] More information regarding these requirements is also available in the Additional Subsidies section (IV.B.5) of the *Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2012 Appropriations Affecting the Clean Water and Drinking Water State Revolving Fund Programs.*

unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.

(c) APPLICATION.—Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(d) WAIVER.—If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.

(e) INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.

(f) MANAGEMENT AND OVERSIGHT.—The Administrator may retain up to 0.25 percent of the funds appropriated for this title for management and oversight of the requirements of this section.

(g) EFFECTIVE DATE.—This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of enactment of the Water Resources Reform and Development Act of 2014.

The FWPCA section 608 codifies a provision that had recently been included in EPA's SRF appropriations that requires assistance recipients, absent a waiver, to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, and repair of treatment works.

Except for applying the provision only to projects for treatment works that are funded by the CWSRF, the AIS language included in the WRRDA is identical to the AIS language used in the FY 2014 appropriations act. Therefore, EPA intends to interpret the language in the same manner as described in *Implementation of Iron and Steel Provisions of P.L.113-76, Consolidated Appropriations Act of 2014*.

The effective date for the newly codified provision is the date of enactment of the WRRDA, or June 10, 2014.

Section 5005. Report on the Allotment of Funds

The WRRDA includes the following provision:

> *(a) Review.—The Administrator of the Environmental Protection Agency shall conduct a review of the allotment formula in effect on the date of enactment of this Act for allocation of funds authorized under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) to determine whether that formula adequately addresses the water quality needs of eligible States, territories, and Indian tribes, based on—*
>
> > *(1) the most recent survey of needs developed by the Administrator under section 516(b) of that Act (33 U.S.C. 1375(b)); and*
> >
> > *(2) any other information the Administrator considers appropriate.*
>
> *(b) Report.—Not later than 18 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make publicly available a report on the results of the review under subsection (a), including any recommendations for changing the allotment formula.*

A review of the CWSRF allotment formula will begin in FY 2015.

Section 5006. Effective date

The WRRDA includes the following provision:

> *This subtitle, including any amendments made by the subtitle, shall take effect on October 1, 2014.*

The amendments to the FWPCA apply to assistance provided after September 30, 2014 unless otherwise stated elsewhere in this document. States that have not met the statutory requirements in previous capitalization grants must still meet those requirements (e.g., the additional subsidy and green project reserve requirements).

Subtitle B: Amended Provisions in Title I, II, and V

Section 5011. Watershed Pilot Projects (Section 122)

Section 122

As amended, the FWPCA section 122 now states:

> *SEC. 122. WATERSHED PILOT PROJECTS.*
>
> *(a) IN GENERAL.—The Administrator, in coordination with the States, may provide technical assistance and grants to a municipality or municipal entity to carry out pilot projects relating to the following areas:*
>
> > *(1) WATERSHED MANAGEMENT OF WET WEATHER DISCHARGES.—The management of municipal combined sewer overflows, sanitary sewer overflows,*

and stormwater discharges, on an integrated watershed or subwatershed basis for the purpose of demonstrating the effectiveness of a unified wet weather approach.
(2) STORMWATER BEST MANAGEMENT PRACTICES.—The control of pollutants from municipal separate storm sewer systems for the purpose of demonstrating and determining controls that are cost-effective and that use innovative technologies to manage, reduce, treat, recapture, or reuse municipal stormwater, including techniques that utilize infiltration, evapotranspiration, and reuse of stormwater onsite.
(3) WATERSHED PARTNERSHIPS.—Efforts of municipalities and property owners to demonstrate cooperative ways to address nonpoint sources of pollution to reduce adverse impacts on water quality.
(4) INTEGRATED WATER RESOURCE PLAN.—The development of an integrated water resource plan for the coordinated management and protection of surface water, ground water, and stormwater resources on a watershed or subwatershed basis to meet the objectives, goals, and policies of this Act.
(5) MUNICIPALITY-WIDE STORMWATER MANAGEMENT PLANNING.—The development of a municipality-wide plan that identifies the most effective placement of stormwater technologies and management approaches, to reduce water quality impairments from stormwater on a municipality-wide basis.
(6) INCREASED RESILIENCE OF TREATMENT WORKS.—Efforts to assess future risks and vulnerabilities of publicly owned treatment works to manmade or natural disasters, including extreme weather events and sea-level rise, and to carry out measures, on a systemwide or area-wide basis, to increase the resiliency of publicly owned treatment works.

(b) ADMINISTRATION.—The Administrator, in coordination with the States, shall provide municipalities participating in a pilot project under this section the ability to engage in innovative practices, including the ability to unify separate wet weather control efforts under a single permit.
(c) REPORT TO CONGRESS.—Not later than October 1, 2015, the Administrator shall transmit to Congress a report on the results of the pilot projects conducted under this section and their possible application nationwide.

Guidance implementing this section is under development.

<u>Section 5012. Definition of Treatment Works (Section 212)</u>

<u>Section 212(2)(A)</u>
As amended, the FWPCA section 212(2)(A) now states:

(2)(A) The term ‘‘treatment works’’ means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as

standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application*) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.*

The FWPCA section 212(2)(A) expands the definition of treatment works to include land necessary for construction. For treatment works projects funded under section 603(c), the leasing and fee-simple purchase of land, as specified in section 212(2)(A), is eligible. This includes surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible projects, and land integral to the treatment process (e.g., land for effluent application or recharge basins).

Section 5013. Funding for Indian Programs (Section 518)

Section 518

As amended, the FWPCA section 518 now states:

(c) RESERVATION OF FUNDS—

(1) FISCAL YEARS 1987-2014.—The Administrator shall reserve each of fiscal years 1987 through 2014 beginning after September 30, 1986, before allotments to the States under section 1285(e) of this title, one-half of one percent of the sums appropriated under section 1287 of this title.

(2) FISCAL YEAR 2015 AND THEREAFTER.—For fiscal year 2015 and each fiscal year thereafter, the Administrator shall reserve, before allotments to the States under section 604(a), not less than 0.5 percent and not more than 2.0 percent of the funds made available to carry out title VI.

(3) USE OF FUNDS.—Funds reserved under this subsection shall be available only for grants for projects and activities eligible for assistance under section 603(c) to serve—

(A) Indian tribes (as defined in subsection (h));

(B) former Indian reservations in Oklahoma (as determined by the Secretary of the Interior); and

(C) Native villages (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

Specific guidance on the FWPCA section 518 program that provides funding for tribal wastewater infrastructure will be included in the forthcoming Clean Water Indian Set Aside program guidance.

APPENDIX I

Supplemental Information for Implementing Section 603(d)(1)(E)(i)(III)

Under Section 603(d)(1)(E)(i)(III) of the Federal Water Pollution Control Act, as amended, a recipient of a Clean Water State Revolving Fund (CWSRF) loan for "repair, replacement, or expansion" of a treatment works must certify that it has evaluated and will be implementing water and energy conservation efforts as part of its fiscal sustainability plan. As stated in *Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V and VI of the Federal Water Pollution Control Act*, the Environmental Protection Agency recommends that the CWSRFs evaluate whether a recipient has selected, to the maximum extent practicable, water and energy efficient approaches in the selected project.

Energy Conservation

One example of how CWSRFs can evaluate the energy portion of the certification is to use information developed by the recipient through energy assessments and audits. Energy assessments help utilities identify the amount of energy being used in various aspects of its operations. Energy audits, in turn, allow utilities to identify and prioritize projects that will result in operational and capital improvements to their infrastructure and operations, cost savings, and other climate-related benefits like reductions in greenhouse gas emissions and the use of renewable energy. EPA encourages CWSRFs to promote the use of these proven and objective methods by CWSRF borrowers.

Energy Use Assessments
A number of tools are available to help utilities conduct energy assessments, including:

- **EPA's Energy Use Assessment Tool—**this is a free Excel-based tool that can be downloaded and is specifically designed for small and medium sized wastewater and water utilities. It enables utilities to analyze their current energy bills and analyze energy consumption for major pieces of equipment. It also allows the utility to develop a printable summary report outlining current energy consumption and costs, generate graphs depicting energy use over time, and highlight areas of potential improvement in energy efficiency. It is available at http://water.epa.gov/infrastructure/sustain/energy_use.cfm.
- **NYSERDA Energy Benchmarking Tool—**The New York State Energy Research and Development Agency (NYSERDA) has developed a tool to help wastewater utilities assess and benchmark their current energy usage, along with a number of other useful self-audit checklists, available at http://www.nyserda.ny.gov/Energy-Efficiency-and-Renewable-Programs/Commercial-and-Industrial/Sectors/Municipal-Water-and-Wastewater.aspx.

Energy Audits

Energy audits can be broadly characterized according to the following three levels:

- Level 1 (Walk Through Audits)
  - Generally last several hours at the facility
  - Usually result in suggestions for low cost improvements in areas like HVAC or lighting
- Level 2 (Energy Survey and Analysis Audits)
  - One or two days in duration, plus additional time to review energy bills, etc.
  - In addition to HVAC/lighting recommendations, usually result in recommendations for equipment upgrades in existing processes (e.g., variable frequency drives, more efficient motors, etc.)
- Level 3 (Process Energy Audit)
  - One or more days at the facility, time to analyze energy bills and pump curves, and time for additional data gathering
  - Audit covers energy use in both existing and alternative processes, potential design modifications, and optimization of processes and equipment
  - Audit suggestions covered detailed operational and process suggestions for both short-term and long-term payback periods as well as capital intensive projects that may require outside funding
  - Most likely to result in significant savings

EPA hosted a webinar in August 2014 describing a number of energy assessment and audit tools available to states and potential recipients of CWSRF funding. The webinar slides are available at http://water.epa.gov/infrastructure/sustain/upload/NRWA-Energy-Audits-for-Small-Utilities-8-4-14.pdf.

Tools available to help wastewater utilities obtain or conduct energy audits include:

- **EPA's Energy Use Assessment Tool**—described in more detail above. Available at http://water.epa.gov/infrastructure/sustain/energy_use.cfm.
- **EPRI Energy Audit Manual for Water and Wastewater Facilities**—available at www.cee1.org/ind/mot-sys/ww/epri-audit.pdf.
- **Maine DEP Sample Audit RFP Language**—designed to help utilities obtain assistance for Level 3 Audits, available at http://www.maine.gov/dep/water/grants/SRF/2014/model_energy_audit_rfp.pdf.
- **The Center for Energy Efficiency (CEE) self-audit checklists**—available at www.cee1.org/ind/mot-sys/ww/epri-audit.pdf.

Both energy assessments and audits are eligible for funding under the CWSRF, and a number of organizations can help utilities with these activities, including:

- State Energy Offices (http://www.naseo.org/members-states)
- Electric utilities serving wastewater utilities (http://www.dsireusa.org/)

- Technical assistance providers like the National Rural Water Association, RCAP, and others
- Department of Energy Industrial Assessment Centers (http://energy.gov/eere/amo/industrial-assessment-centers-iacs).

Water Conservation

Water conservation includes efficiency and reuse efforts to not only conserve our raw water supply, but to also reduce flow to wastewater treatment plants. Therefore, one way CWSRF borrowers can fulfill the water conservation requirement is to consider alternative or complementary projects that result in reduced wastewater flows and therefore reduce a treatment works' capacity needs. There are a number of water conservation projects borrowers can consider, including:

- **Water Reuse—**recycling and water reuse projects that replace potable sources with non-potable sources
    - Gray water, condensate, and wastewater effluent reuse systems
    - Extra treatment costs and distribution pipes associated with water reuse

- **Water Efficient Devices—**installing or retrofitting water efficient devices, such as plumbing fixtures and appliances
    - Shower heads, faucets, toilets, urinals, etc.
    - Education and incentive programs to conserve water such as rebates

- **Water Meters—**installing any type of water meter in a previously unmetered area, or replacing existing broken/malfunctioning water meters or upgrading them if rate structure is based on metered use

- **Water Audits and Conservation Plans—**performing audits of entire utilities or individual users (e.g., large corporations) to assess the amount of water being consumed, the need for retrofits, etc.

Utilities can also fulfill this requirement by considering water conservation projects that are not CWSRF eligible.

Water Efficiency Tools

Tools are readily available to help utilities determine how much water is being conserved, including:

- **EPA's WaterSense Program—**Tools and resources to promote water efficiency are available at http://www.epa.gov/watersense/. States, local governments, and utilities can partner with WaterSense to get access to additional tools and resources to help them design and implement water efficiency and conservation programs. Partnership is free.

- **EPA's Water Conservation Plan Guidelines—**Helpful recommendations to utilities for creating and implementing a Water Conservation Plan, depending on the size of the population served by the utility, available at http://epa.gov/watersense/pubs/guide.html.

- **AWWA Water Audit Software—**Free software specifically designed to help utilities perform water audits, to help quantify and track water losses, and determine areas for improved efficiency. Available at http://www.awwa.org/resources-tools/water-knowledge/water-loss-control.aspx.

- **AWE Water Conservation Tracking Tool—**A tool to evaluate water savings, costs, and benefits of conservation programs for a specific water utility, available to AWE members at http://www.allianceforwaterefficiency.org/tracking-tool.aspx.

- Many states have guidelines and example plans to help utilities develop water conservation plans. For example:

    - **TWDB Water Conservation Plan—**Texas Water Development Board has developed a set of guidelines, tutorials, and example plans to help utilities create a water conservation plan that can be adopted and utilized by different entities. Available at http://www.twdb.texas.gov/conservation/municipal/plans/.

APPENDIX II

Additional Subsidization Projections for Various Annual Appropriations

Annual Appropriation	Additional Subsidization (%)	Additional Subsidization ($)[13]
$1,000,000,000 or Less	0%	$0
$1,100,000,000	10%	$110,000,000
$1,200,000,000	20%	$240,000,000
$1,300,000,000	30%	$390,000,000
$1,400,000,000	30%	$420,000,000
$1,500,000,000	30%	$450,000,000
$1,600,000,000	30%	$480,000,000
$1,700,000,000	30%	$510,000,000
$1,800,000,000	30%	$540,000,000
$1,900,000,000	30%	$570,000,000
$2,000,000,000	30%	$600,000,000

[13] These amounts are approximations. The actual amounts will be less due to the fact that a portion of an annual CWSRF appropriation is used to fund other activities, including direct grants to the tribes and territories.

APPENDIX III

Questions and Answers on the *Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act*

Section 602(b)(6): Environmental Review and Davis-Bacon

Q1: Can CWSRFs utilize a Tier II State Environmental Review Process (SERP)?

A1: No. CWSRF projects may no longer use a Tier II State Environmental review process.

Prior to the WRRDA, a "NEPA-like" State environmental review process was required for all section 212 publicly-owned treatment works projects constructed "in whole or in part before FY 1995 with funds directly made available" by a capitalization grant (equivalency projects). A "Tier II" State environmental review process could be used for all other section 212 publicly owned treatment works constructed with SRF assistance.

The WRRDA now applies FWPCA section 511(c)(1) to CWSRF assistance for the construction of treatment works; therefore, a "NEPA-like" State environmental review process is now required for all CWSRF-funded treatment works projects. States may no longer accept a "Tier II" environmental review conducted after October 1, 2014. A "Tier II" environmental review conducted before October 1, 2014 is acceptable.

Q2: Do the Davis Bacon Related Act requirements apply to refinanced projects for the construction of treatment works?

A2: Yes. Davis Bacon Related Act requirements apply to the entirety of construction activities for treatment works that are financed or refinanced by the CWSRF on or after October 30, 2009. If a project began construction prior to October 30, 2009, but is refinanced through an SRF assistance agreement executed on or after October 30, 2009, Davis Bacon Related Act requirements will apply to all construction that occurs on or after October 30, 2009, through completion of construction. There is no retroactive application of Davis Bacon where a refinancing occurs for a project that has completed construction prior to October 30, 2009.

Section 602(b)(9): Generally Accepted Accounting Principles (GAAP)

Q3: Are private entities that receive CWSRF assistance required to maintain project accounts in accordance with GAAP?

A3: The Government Accounting Standards Board (GASB) establishes the accounting standards for governmental entities. GASB standards do not apply to the private sector or individuals. The private sector and individuals would be subject to generally accepted

accounting principles (GAAP), promulgated by the American Institute of Certified Public Accountants (AICPA), as applicable.

Section 602(b)(11): Fund Balance

Q4: How does EPA interpret "fund balance"?

A4: "Fund balance" is interpreted to mean the total federal and state contributions less any CWSRF funds used for administrative expenses and additional subsidization.

Section 602(b)(14): Procurement of A/E Services

Q5: If more than one assistance agreement is issued for the same project, can one assistance agreement be considered an equivalency project while the other assistance agreement is not?

A5: Yes. If more than one assistance agreement is issued for the same project, one or more of the assistance agreements may be "equivalency" while the others are not. For example, assistance, such as a loan, for the construction of a project may be considered an equivalency project while assistance for the planning and design of the same project may be considered a non-equivalency project. However, if one assistance agreement is made for the planning, design, and construction of a project, and that agreement is an "equivalency" project, then the recipient must comply with section 602(b)(14). Furthermore, if one or more assistance agreements for a project are rolled into one assistance agreement, and one of the agreements is an "equivalency" project, then the entire project is an "equivalency" project and the recipient must comply with section 602(b)(14).

Q6: Can cost/price be a selection factor for procurement of A/E services covered by section 602(b)(14)?

A6: No. Cost/price cannot be a selection factor under qualifications based selection procedures. Selection must be based on demonstrated competence and qualification only. As such, cost/price cannot be used as a criterion to evaluate, rank, or select the most highly qualified firm. However, 40 USC 1104 allows an assistance recipient to terminate contract negotiations with the most highly qualified firm if an agreement cannot be reached regarding fair and reasonable compensation. In that case, the assistance recipient must formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached.

Q7: What happens if an applicant/assistance recipient follows qualifications based selection procedures, but does not generate interest from at least three firms?

A7: A procurement of A/E services shall be considered in compliance with section 602(b)(14) even when the Request for Qualification does not generate three responses as long as the applicant/assistance recipient made a good faith effort to publicly advertise and directly solicit participation. On a case by case basis and using best professional judgement, a CWSRF shall determine whether a good faith effort was made.

Q8: Do A/E services contracts procured via design-build procedures satisfy the section 602(b)(14) requirement?

A8: No. The 602(b)(14) requirement pertains to the design portion of a design-bid-build process and is not compatible with a design-build process. Because it would be impossible to fully satisfy the 40 USC 1101 *et. seq.* requirements through a design-build procurement, A/E services procured via the design-build methodology cannot comply with section 602(b)(14) and should not be used as equivalency projects.

Q9: Are CWSRFs required to review borrowers' compliance with section 602(b)(14)? How should CWSRFs document borrowers' compliance?

A9: CWSRFs do not need to review the actual procurement process of A/E services contracts associated with equivalency projects, but the State must obtain a certification from the assistance recipient that those contracts were procured in accordance with 40 USC 1101 *et. seq*. This certification should be placed in the project file.

Section 603(c): Project Eligibilities

Q10: Can the CWSRF provide financial assistance for new eligible project types if the costs for the project were incurred prior to October 1, 2014?

A10: Yes. Project eligibilities that were added by the WRRDA amendments, and not previously eligible in the CWSRF program, are eligible for assistance agreements made after October 1, 2014, even if the cost was incurred prior to October 1, 2014. This includes refinancing and restructuring existing CWSRF assistance agreements.

Q11: How should states determine which projects are treatment works for the purpose of applying Davis Bacon, AIS, and environmental review?

A11: States should use best professional judgement to determine whether or not a project is a treatment work, based upon the definition in section 212 of the Federal Water Pollution Control Act (FWPCA). In cases where a project is determined to not be a treatment work, states should document the decision in the project file along with the reason for the determination.

Q12: Are stormwater management practices that do not provide any form of treatment eligible?

A12: Yes, section 603(c)(5) states that CWSRFs may provide financial assistance "for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water." Practices such as stormwater pipes, designed to manage, but not treat, stormwater are eligible.

Q13: What types of projects are eligible under Section 603(c)(7)?

A13: Section 603(c)(7) states that each CWSRF may provide financial assistance "for the development and implementation of watershed projects meeting the criteria set forth in section 122." Section 122 provides the following criteria:

- Watershed management of wet weather discharges: The management of municipal combined sewer overflows, sanitary sewer overflows, and stormwater discharges, on an integrated watershed or subwatershed basis for the purpose of demonstrating the effectiveness of a unified wet weather approach.
- Stormwater best management practices: The control of pollutants from municipal separate storm sewer systems for the purpose of demonstrating and determining controls that are cost-effective and that use innovative technologies to manage, reduce, treat, recapture, or reuse municipal stormwater, including techniques that utilize infiltration, evapotranspiration, and reuse of stormwater onsite.
- Watershed partnerships: Efforts of municipalities and property owners to demonstrate cooperative ways to address nonpoint sources of pollution to reduce adverse impacts on water quality.
- Integrated water resource plan: The development of an integrated water resource plan for the coordinated management and protection of surface water, ground water, and stormwater resources on a watershed or subwatershed basis to meet the objectives, goals, and policies of this Act.
- Municipality-wide stormwater management planning: The development of a municipality-wide plan that identifies the most effective placement of stormwater technologies and management approaches, to reduce water quality impairments from stormwater on a municipality-wide basis.
- Increased resilience of treatment works: Efforts to assess future risks and vulnerabilities or publicly owned treatment works to manmade or natural disasters, including extreme weather events and sea-level rise, and to carry out measures, on a systemwide or area-wide basis, to increase the resiliency of publicly owned treatment works.

Q14: What types of projects are eligible under Section 603(c)(11)?

A14: Section 603(c)(11) states that each CWSRF may provide financial assistance "to any qualified nonprofit entity… to provide assistance to owners and operators of small and medium publicly owned treatment works (A) to plan, develop, and obtain financing for

eligible projects under this subsection, including planning, design, and associated preconstruction activities; and (B) to assist such treatment works in achieving compliance with this Act." Assistance may include, but is not limited to, support with project planning (i.e. evaluation of technological alternatives, development of fiscal sustainability plans, etc.), development and initial implementation of training activities, and help with project financing (i.e. rate analysis, etc). Under this eligibility, only technical assistance activities are eligible. Assistance cannot be provided to a nonprofit entity for capital improvements or operations and maintenance at a POTW.

Q15: Can a CWSRF use administrative funds to hire a nonprofit to provide technical assistance to small systems/projects under section 603(c)(11)?

A15: Yes, but CWSRFs will need to include this as a line item in their administrative budget submitted with their capitalization grant application and, if federal funds are used, CWSRFs must comply with the Part 31 procurement regulations when procuring the nonprofit.

Section 603(d)(1)(A)&(B): Loan Terms

Q16: Does the restriction under section 603(d)(1)(A) limiting the terms of CWSRF loans to the lesser of 30 years and the useful life of the project also apply when a CWSRF is buying or refinancing debt obligations under section 603(d)(2)?

A16: Yes. A CWSRF may only purchase debt obligations where the term of the debt is the lesser of 30 years and the useful life of the project. In addition, a CWSRF can only refinance an existing debt obligation to the extent that the term does not exceed the lesser of 30 years and the useful life of the project. For example, if a CWSRF decided to refinance an outstanding 20-year municipal bond, it could only extend the term by either 10 years or to the end of the useful life of the project, whichever is sooner.

Q17: Can a CWSRF provide a loan that exceeds the useful life of a project?

A17: No. Section 603(d)(1)(A) as amended now restricts the terms of CWSRF loans to the lesser of 30 years or the useful life of the project.

Q18: Does the state need to provide documentation of the useful life of the project?

A18: Yes. Documentation of the useful life of the project should be included as part of the project file.

Q19: What impact does the new flexibility to provide up to 30 year loans under section 603(d)(1)(A) have on EPA's draft guidance on the approval of Extended Term Financing (ETF) proposals by CWSRFs?

A19: CWSRFs no longer need to submit a proposal for EPA's approval to offer this type of assistance. In addition, CWSRFs that have previously been approved to offer ETF may now provide this type of assistance to any eligible recipient and are no longer required to report annually to EPA on the financial impacts on the fund.

Section 603(d)(1)(E): Fiscal Sustainability Plans

Q20: To what types of assistance and assistance recipients does the section 603(d)(1)(E) fiscal sustainability planning (FSP) provision apply?

A20: Per the statue, the FSP requirement applies only to loans and only to projects eligible under section 603(c)(1); therefore, FSPs are required for loans involving the repair, replacement, or expansion of a publicly owned treatment works.

Section 603(i): Additional Subsidization and Affordability Criteria

Q21: If a CWSRF chooses not to provide additional subsidization from their capitalization grants are they still required to establish affordability criteria?

A21: Yes. CWSRFs must establish affordability criteria in accordance with WRRDA no later than September 30, 2015. Criteria must be established regardless of whether the CWSRF plans to distribute additional subsidization.

Q22: If a CWSRF chooses not to use affordability criteria to distribute additional subsidization do they still need to develop criteria?

A22: Yes. CWSRFs must establish affordability criteria in accordance with WRRDA no later than September 30, 2015. Criteria must be established regardless of how a CWSRF plans to distribute additional subsidization.

Q23: Will EPA Regions be required to approve CWSRF affordability criteria?

A23: No. The establishment of affordability criteria will be left to the CWSRFs' discretion. Beyond the statutory requirements regarding affordability criteria CWSRFs have the flexibility to establish and weight criteria according to their needs.

Section 608: American Iron and Steel

Q24: Does the American Iron and Steel requirement apply to refinanced projects?

A24: Yes. If a project began construction, financed from a non-SRF source, prior to June 10, 2014, but is refinanced through an SRF assistance agreement executed on or after October 1, 2014, AIS requirements will apply to all construction that occurs on or after June 10, 2014, through completion of construction, unless engineering plans and specifications were approved by a responsible state agency prior to June 10, 2014. For projects funded on or after October 1, 2014, there is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to June 10, 2014.

Q25: Are projects for which plans and specifications were approved prior to the enactment of WRRDA exempt from complying with the American Iron and Steel requirement?

A25: Yes. Section 608(g) of the FWPCA, as amended, specifically exempts projects for which the plans and specifications were approved prior the date of enactment of WRRDA (June 10, 2014). This applies to projects funded on or after October 1, 2014.

General

Q26: How does DBE apply?

A26: DBE is an equivalency requirement. WRRDA does not present any basis to apply DBE differently from what is currently done.

Q27: What are the federal cross-cutters?

A27: Federal cross-cutters are requirements of other federal laws and Executive Orders that apply in federal financial assistance programs. In the CWSRF program, the cross-cutting requirements only apply to projects and activities receiving funds "directly made available by" capitalization grants. However, all CWSRF projects and activities are subject to federal anti-discrimination laws, including Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, section 13 of the Federal Water Pollution Control Act Amendments of 1972 and Executive Order 11246 on affirmative action in federal contracting. Below is a list of the current cross-cutters. This list can change by revisions to existing laws and/or the enactment of new laws.

Archeological and Historic Preservation Act
Clean Air Act
Coastal Barrier Resources Act
Coastal Zone Management Act
Endangered Species Act
Protection and Enhancement of the Cultural Environment
Floodplain Management
Protection of Wetlands
Farmland Protection Policy Act

Fish and Wildlife Coordination Act
National Historic Preservation Act
Safe Drinking Water Act
Wild and Scenic Rivers Act
Demonstration Cities and Metropolitan Development Act
Women's and Minority Business Enterprise
Uniform Relocation and Real Property Acquisition Policies Act
Debarment and Suspension
Migratory Bird Act
Magnuson-Stevens Act – Essential Fish Habitat
Environmental Justice

Q28: Can federal cross-cutters be banked?

A28: No, federal cross-cutters cannot be banked. Cross-cutters are requirements of other federal laws and Executive Orders. EPA does not have the authority to allow cross-cutters to be banked. Also, the Federal Funding Accountability and Transparency Act (FFATA) of 2010 requires SRF programs to report on recipients that receive federal funds into the FFATA reporting systems. In the SRF program, projects that receive federal funds or an amount equal to the capitalization grant (equivalency), are considered federal projects and all federal projects must comply with federal cross-cutters.