



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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OFFICE OF  
WATER

**MEMORANDUM**

SUBJECT: Award of Capitalization Grants with Funds Appropriated by P.L. 111-5, the  
"American Recovery and Reinvestment Act of 2009"

FROM: James A. Hanlon, Director  
Office of Wastewater Management (4201M)

Cynthia C. Dougherty, Director  
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors  
Regions I - X

**I. PURPOSE**

This memorandum provides information and guidelines on how the Environmental Protection Agency (EPA) will award and administer State Revolving Fund Capitalization Grants appropriated to the State and Tribal Assistance Grants (STAG) account in P.L. 111-5, the "American Recovery and Reinvestment Act of 2009" (ARRA).

The objectives of the ARRA, as they relate to the SRF programs, are clear:

- "To preserve and create jobs and promote economic recovery."
- "To assist those most impacted by the recession."
- "To provide investments needed to increase economic efficiency by spurring technological advances in science and health."
- "To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits."
- "To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases."

## **II. BACKGROUND**

The EPA section of the ARRA includes \$6 billion in the STAG account for Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) capitalization grants. Funds will remain available for obligation until September 30, 2010. Additionally, EPA has the authority to retain up to 1 percent of the funds appropriated for management and oversight.

The specific requirements governing the award of these capitalization grants are contained in the following documents: P.L. 111-5, and Conference Report 111-16. In addition, OMB has provided guidance at: [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-10.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf).

The specific requirements contained in these documents have been further described and explained in this memorandum. Nothing in this document is meant to conflict with or supersede P.L. 111-5 or the OMB Guidance.

Additional guidance may be forthcoming as well as a list of questions and answers. The questions and answers will be periodically updated and distributed as this guidance is implemented.

## **III. APPLICATION REQUIREMENTS**

To enable States to meet statutory deadlines while ensuring adequate time to address the deadlines in the ARRA as well as relevant continuing legal requirements, EPA recommends that States submit grant applications as soon as possible after appropriated funds become available for obligation. Applications under the ARRA should be submitted as separate grant applications as there are unique requirements that attach to these funds.

In order to further accelerate the award of grants, EPA will allow States to apply for conditional grants, as well as partial grants. Conditional grants may be awarded based on a draft Intended Use Plan (IUP) as described below in III.A. Partial grants may be awarded based on a project list that does not contain projects in an amount equal to or greater than the funds available to the State under the ARRA.

EPA understands that States may blend funds awarded under the ARRA with projects funded from the base CWSRF and DWSRF programs. If this option is used, it is important to note that a project funded with both base and ARRA funds must meet the applicable ARRA requirements outlined below for the entire project. However, the base and ARRA funds must be separately managed and tracked for accounting purposes.

The following will be required in order to award a grant.

## A. INTENDED USE PLAN (IUP)

Section 606(c) of the Clean Water Act and section 1452(b) of the Safe Drinking Water Act require the States to prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support the goals of the SRF. An IUP, meeting all requirements of Title VI of the Clean Water Act (CWA) and regulations, or section 1452 of the Safe Drinking Water Act (SDWA) and regulations, will be required for approval of a grant award and release of awarded funds. An IUP must contain the following:

### 1. List of Projects

Under section 606(c)(1) of the CWA, the IUP must contain a list of publicly owned treatment works projects on the State's priority list (PPL), developed pursuant to section 216 of the CWA, that are eligible for SRF construction assistance. This list must include: the name of the community; permit number or other applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance. The IUP must also contain a list of the non-point source and national estuary protection activities under sections 319 and 320 of the CWA that the State expects to fund from its SRF. The list included in the IUP must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for before a grant can be awarded.

Under section 1452(b)(3)(B) of the SDWA, the IUP must contain a list of projects that are eligible for assistance under section 1452 and are to be assisted pursuant to the plan. This list must include: the name of the public water system, a description of the project, the priority assigned to the project, the expected terms of financial assistance, and the size of the community served. The fundable list included in the IUP must contain eligible projects for which the total cost of assistance requested is at least equal to the amount of the grant being applied for before a grant can be awarded. The IUP must also contain a comprehensive list of projects that may receive DWSRF assistance from the supplemental appropriation provided under the Recovery Act or from other sources. A State may combine the fundable and comprehensive lists into one list, provided that projects which are expected to receive assistance from available funds designated for use in the current IUP are identified.

For both SRFs, the IUP must contain a description of the intended uses of the Additional Subsidization Reserve (described in V.B. below) and the Green Project Reserve<sup>1</sup> (described in V.C. below). For the Green Project Reserve, the IUP need only contain an affirmative statement that the State will actively solicit eligible reserve projects, if sufficient projects cannot be identified in the IUP. In such a case, the grant award will contain a condition requiring solicitation for such projects and allowing a certification after 180 days if sufficient applications

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<sup>1</sup> The ARRA states: “*Provided further*, That, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds appropriated herein for the Revolving Funds shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.” Projects meeting this requirement are referred to in this guidance as the Green Project Reserve.

do not exist for at least 20% of the capitalization grant, in which case, the funds can be used for traditional projects on the IUP, as detailed in IV.A.2.g. and V.C. below.

## 2. Additional Elements

The CWSRF IUP must contain proposed assistance terms including interest rates; the short-term and long-term goals of the State loan fund; a description of the means by which the State will choose those projects that are ready to proceed to construction; and a declaration that the State has or will have by a date certain the authority to provide a form or forms of additional subsidization required to be provided for at least 50% of the amount of the grant, and has a process and appropriate criteria which it will use to determine how it will provide this assistance to applicants.

The DWSRF IUP must contain proposed assistance terms including interest rates; the short-term and long-term goals of the State loan fund; a description of uses and amounts planned, consistent with the purposes of the ARRA, for any set-asides to be taken under 1452(g)(2) of the SDWA (for this IUP, no set-asides may be taken under section 1452(k) of the SDWA); a description of the means by which the State will choose those projects that are ready to proceed to construction; and a declaration that the State has or will have by a date certain the authority to provide a form or forms of additional subsidization required to be provided for at least 50% of the amount of the grant, and has a process and appropriate criteria which it will use to determine how it will provide this assistance to applicants.

Any State that chooses to transfer funds between either of the CWSRF and DWSRF capitalization grants received under the ARRA must state their intention to do so in their IUP. Uniquely, for capitalization grants under the ARRA, any transfer will be subject to the ARRA requirements as outlined in this guidance.

Example IUPs and PPLs for both the CWSRF and DWSRF are attached (Attachment 1 and 2, respectively). These example IUPs illustrate the minimum information that must be provided specifically to meet the unique requirements of the ARRA grant. Other IUP elements ordinarily required by law (e.g., regarding fees, leveraging, interest rates on assistance that does not include additional subsidization, etc.) must also be included but must be changed from previous submissions only if the State intends to change the policies reflected in any such element for this grant.

## 3. Public Review and Comment

The IUP must contain a statement of how the State has met the requirement of section 605 of the CWA or section 1452(b)(1) of the SDWA for public review and comment on the preparation of the IUP.

#### 4. Amended FY 2009 IUP

It should be noted that IUPs for both SRF programs may be in the form of amended FY 2009 IUPs, so long as the amended IUPs meet all of the above requirements.

#### 5. Draft IUPs for Purposes of Conditional Grants

EPA understands that some States may complete their IUP but still require additional time to complete public review or approval by boards or State government. The Agency will allow conditional grants to be made to facilitate expeditious use of funds upon final public review and/or approval. To receive a conditional grant a draft IUP must be ready for public review and/or consideration by agency/State government bodies and include the information shown above in A.1 and 2. Conditional awards will contain a grant condition stating that funds may not be drawn until an IUP has completed the review process and is approved by the Region. States must submit an IUP that has completed the public review process and received EPA approval before funds may be drawn.

#### 6. IUPs for Purposes of Partial Grants

States that currently do not have a project list equal to the funds they can receive under the ARRA may apply for a partial award. The IUP for a partial award must include the information shown above in A.1, 2 and 3. A partial award will only be made for an amount equal to the total cost of the project list.

### B. ADDITIONAL REQUIREMENTS

The following documents are required in order to complete a grant application:

- SF-424 Application for Federal Assistance, with original signature, including:
  - SF-424A, Budget by categories and indirect cost rate
  - SF-424B, Assurances for non-construction programs
- Certification regarding lobbying and SF LLL (applicable if EPA funds are over \$100,000)
- EPA Form 4700-4 pre-award compliance review report
- Detailed itemized budget
- Copy of negotiated indirect cost rate agreement
- Key contacts form

- Copy of Governor’s certification as required by section 1607(a)<sup>2</sup> of the ARRA

Additionally, it should be noted that the need for an Attorney General’s opinion, as required in 40 CFR §35.3110(d)(2), and 40 CFR §35.3545(d), has been waived.

## **IV. AWARD REQUIREMENTS**

### **A. GRANT CONDITIONS**

The ARRA includes a number of new cross-cutting requirements that will apply to projects funded in part or in whole with funds made available by this Act. Sample grant conditions are included in Attachment 3.

#### 1. Continuing Requirements

All requirements promulgated through guidance or regulations issued by EPA for the implementation of the CWSRF and DWSRF programs will remain in effect unless such requirements are inconsistent with the statutory requirements of the ARRA, conditions of the capitalization grant agreement, or the requirements contained in this document.

#### 2. New Requirements

##### a. Prevailing Wages

Section 1606 of the ARRA contains the following language:

“Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of title 40, United States Code.”

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<sup>2</sup> SEC. 1607. (a) CERTIFICATION BY GOVERNOR.—Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.

The purpose of this language is to apply Davis-Bacon Act wage rules to all assistance agreements made in whole or in part with funds appropriated under the ARRA. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting.

b. American Iron, Steel, and Manufactured Goods

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless (a) a waiver is provided to the recipient by EPA or (b) compliance would be inconsistent with United States obligations under international agreements. In order to receive a waiver, the State must send a written request to the Administrator. A decision will be made based on the following criteria:

1. The requirement is inconsistent with the public interest for purposes of the project for which a waiver has been requested,
2. Iron, steel, and necessary manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, or
3. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the overall cost of the project by more than 25 percent.

If a waiver is granted by the Administrator, EPA will publish such waiver, with a sufficient explanation, in the Federal Register. EPA will provide additional guidance on this provision as it becomes available.

c. Reporting

States will be required to report no less than weekly on the uses of funds provided by the ARRA. The CWSRF Benefits Reporting database (formally known as one-pagers) and the Drinking Water Project Tracking System, will be used to gather information regarding key project characteristics and milestones, as shown in Attachment 4. Project data should be entered into the reporting systems as soon as agreements are signed with assistance recipients. The purpose of these requirements is to ensure Agency and State compliance with the requirements to track data in section 1512 of the ARRA. EPA will compile the data on a weekly basis, as required by OMB, for publication at [recovery.gov](http://recovery.gov).

d. Match

The ARRA contains the following language:

*“Provided further, That the funds appropriated herein shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3) or 202 of the*

Federal Water Pollution Control Act nor the matching requirements of section 1452(e) of the Safe Drinking Water Act.”

This language waives the requirements of Title VI of the CWA and section 1452(e) of the SDWA to provide state match for the capitalization grant. Additionally, the language waives the cost share requirement for Title II grant recipients such as the District of Columbia and the Territories. Because the only SDWA match waived by the ARRA is the section 1452(e) match, the 1:1 match required for State Program set-asides in section 1452(g)(2) is not waived and remains in force.

#### e. Cash Draws

Due to requirements for expedited spending of ARRA funds and increased oversight, EPA requires that all cash draws for projects funded with ARRA funds be drawn from the grant award made available by the ARRA in proportion to the ARRA funding in the overall assistance agreement. In other words, projects funded by the ARRA should not expend funds from other open grants, and projects funded in part by the ARRA should expend funds from other open grants only to the extent and proportion to which other grants are identified as a source of partial funding towards the project.

#### f. Transfers

Any State that chooses to transfer funds between either of the CWSRF and DWSRF capitalization grants received under the ARRA must state their intention to do so in their IUP. Uniquely, for capitalization grants under the ARRA, any transfer will be subject to the ARRA requirements as outlined in this guidance.

#### g. Certification of Insufficient Applications for the Green Project Reserve

The ARRA states:

*“Provided further, That to the extent there are sufficient eligible project applications, not less than 20 percent of the funds shall be for projects, or portions of projects, that include green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.”*

A grant condition requiring this reserve will be included in the grant award. Additionally, the grant condition will require a solicitation of projects, while allowing a certification after 180 days if sufficient applications do not exist for at least 20% of the capitalization grant, in which case, the funds can be used for traditional projects on the IUP. This provision is discussed in greater detail in Section V.C below. If the IUP submitted with the grant application does not contain sufficient projects for the reserve, funds not accounted for by the IUP will not be available until an amended IUP with sufficient projects is submitted to EPA or EPA reviews and accepts a certification of insufficient applications.

#### h. Priority for Projects Ready to Proceed to Construction in 12 Months/Preference for Expeditious Activities

The ARRA states:

*“Provided further, That, notwithstanding the priority rankings they would otherwise receive under each program, priority for funds appropriated herein shall be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of this Act.”*

To implement this new priority, each State that has not already done so should review and consult with potential assistance recipients with projects on its Fundable and Comprehensive Project Priority lists and its Intended Use Plan, to determine which projects are most likely to be able to proceed to actual construction within the next 12 months. The ARRA requires that projects so determined must be given priority in receiving ARRA funding, and must reflect that priority in the ranking the project receives on the Fundable Project Priority list or in the Intended Use Plan. However, this requirement does not negate the Green Project Reserve requirement to use at least 20% of the grant for projects or portions of projects that include green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

In addition, ARRA section 1602 requires that “recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after ... enactment” of the Act. States should implement this preference requirement by selecting for ARRA funding those projects that, as far as it's possible to determine, appear most likely to be able to start construction by June 17, 2009.

#### i. Certification as to Each Project

Section 1511 of the ARRA states that:

*“[t]he Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made and posted.”*

EPA will include a condition in each capitalization grant agreement requiring that a certification, meeting the requirements of ARRA section 1511, be duly made and posted for each

project prior to concluding any assistance agreement for such project using funds provided under this grant.

j. Additional Subsidization Reserve

The ARRA contains the following requirement:

*“Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these:”*

To receive a grant award, each State must agree to use at least 50% of its grant for the above purposes, as described in further detail in V.B. below.

k. Limit on Funds

The ARRA contains the following provision:

*“Sec. 1604. None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.”*

Furthermore, the Joint Explanatory Statement in Conference Report 111-16 states, “Section 1604 prohibits the use of funds for particular activities.” This section clearly prohibits particular activities, but does not prohibit the use of funds from having secondary effects that may impact any of the listed prohibited uses. For instance, a State is not prohibited from funding a treatment plant that may have a casino or golf course as a customer. However, a State may not provide funding to a casino to construct an on-site treatment plant.

l. Completion of IUP

For those States that apply for a conditional grant award, a condition will be included in the grant stating that funds may not be drawn until an IUP has completed the review process and is approved by the Region. States must submit an IUP that has completed the public review process and has EPA approval before funds may be drawn. For partial grants, an amended IUP including projects in an amount equal to the remaining funds available to the State under ARRA must be submitted to EPA before the grant is amended to award the remaining funds.

## B. PROJECT OFFICER RESPONSIBILITIES

Due to the short period of time available for project starts under the ARRA, EPA's goal is to award ARRA grants no later than 21 days after a complete application is received. EPA has developed a checklist (Attachment 5) to help project officers determine whether grant applicants have provided sufficient information for the grant to be awarded. The checklist should be used as a guide to examine all parts of the IUP, and may be used by States to assist in preparing grant applications.

Sample IUP's that address the distinctive requirements of the ARRA are attached to this guidance (Attachment 1).

## V. PROGRAM IMPLEMENTATION

### A. ACCELERATED CONTRACTS OR CONSTRUCTION

#### 1. Deadline for Contracts or Construction

The ARRA contains the following:

*“Provided further, That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) that are not under contract or construction within 12 months of the date of enactment of this Act:”*

The purpose of this language is to ensure that all funds appropriated under the ARRA are not only committed to projects through binding commitments or executed loan agreements, but are further committed to contracts for construction by the assistance recipient, or construction has commenced within 12 months of enactment. In order to meet the requirements of the ARRA, all funds must be committed to eligible projects and each State must provide a signed certification that contracts have been signed or projects are under construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010.

Each State must certify in writing, and forward to EPA, not later than March 1, 2010, that projects funded under its ARRA grant have met the above requirements.

Based on the under contract/under construction deadline outlined above, States are advised to include appropriate conditions, that may include termination, in their agreements with local recipients. If the State fails to meet the 12 month deadline in the ARRA, EPA must deobligate the funds from the State. Therefore, it is imperative that States have complementary protective provisions in their agreements with local recipients.

## 2. Deobligation of Funds

The Administrator must reallocate any funds that do not meet the required deadline for contracts or construction. In order to implement this provision, EPA will deobligate funds from awarded grants that have not been committed to projects and that are not under contracts or under construction by February 17, 2010. Reallotment will proceed as described in section V.F.2.

## B. MANAGEMENT OF ADDITIONAL SUBSIDIZATION RESERVE

The ARRA contains the following requirement:

*“Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans, or grants, or any combination of these:”*

The Joint Explanatory Statement in Conference Report 111-16 further states that “the Conferees expect the States to target, as much as possible, the additional subsidized monies to communities that could not otherwise afford an SRF loan.”

### 1. Eligible Assistance Recipients

Any eligible recipient of assistance from a State Revolving Fund is eligible for additional subsidization. However, as noted above, the conferees expect the States to target, as much as possible, the additional subsidies to communities that could not otherwise afford an SRF loan (e.g., disadvantaged communities, environmental justice communities).

### 2. Eligible Activities

Any activity eligible for assistance from a State Revolving Fund is eligible for additional subsidization, so long as the activity is not prohibited under IV.A.2.k. (Limit on Funds), V.D. (Refinancing) or V.E. (Prohibition on land or easement purchases).

### 3. Eligible Forms of Assistance

#### a. Principal Forgiveness

A State SRF may provide assistance in the form of principal forgiveness. Principal forgiveness must be granted at the execution of the loan agreement for the amount forgiven to be

counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the amount of principal forgiven.

#### b. Negative-Interest Loans

A State SRF may provide assistance in the form of negative-interest loans. A negative-interest loan is a loan for which the rate of interest is such that the total payments over the life of the loan are less than the principal of the loan. The negative-interest rate must be included in the loan agreement at the time of execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the difference between the principal of the loan and the total payments expected over the life of the loan.

#### c. Grants

A State SRF may provide assistance in the form of a grant. The grant must be provided at the time of assistance agreement execution to be counted against the total required to be provided as additional subsidization. The amount counted against the requirement is the total grant amount included in the agreement. It should be noted that grant recipients under this provision are considered “subgrantees” for the purposes of EPA’s grant regulations as detailed below in section V.B.5.

### 4. Calculation of Additional Subsidization Provided

Each State must calculate its use of additional subsidization in the manner described in V.B.3. above. By February 17, 2010, each State must have committed an amount equal to at least 50% of the funds made available from the capitalization grant awarded to additional subsidization pursuant to the ARRA.

### 5. Laws, Regulations and Requirements for Assistance Agreements that are in the Form of Grants

The ARRA contains language that allows States to provide grants to eligible recipients. A listing of the Federal Laws and Executive Orders that apply to all EPA grants, including those authorized by the ARRA, is contained in Attachment 6. These authorities apply to all projects funded in whole or in part by a grant authorized by the ARRA. Some of the authorities only apply to grants that include construction. A more detailed description of the Federal laws, Executive Orders, OMB Circulars and their implementing regulations is available through the OGD Grants Intranet website at <http://intranet.epa.gov/ogd/>.

The regulations at 40 CFR Part 31 apply to grants and cooperative agreements awarded to State and local (including tribal) governments. The regulations at 40 CFR Part 30 apply to grants with nonprofit organizations and with non-governmental for-profit entities. Note that the latter grants cannot be made with DWSRF funds except to eligible public water systems, because

only certain public water systems are eligible recipients of DWSRF project assistance that can be provided under the ARRA.

OGD added a section to EPA's Assistance Administration Manual 5700 outlining Agency policy on the award and management of subawards, "*Policy on Subawards Under Assistance Agreement*". The policy applies to subaward work under awards and supplemental amendments issued after May 15, 2007. The policy clarifies subrecipient eligibility, addresses subaward competition requirements, and provides guidance regarding the distinctions between procurement contracts and subawards. It also includes special considerations regarding subawards to 501(c)(4) and for-profit organizations, and subawards to foreign/international organizations or any entity performing work in a foreign country. The policy is primarily implemented through an administrative National Term and Condition for Subawards. The subaward policy can be found at <http://intranet.epa.gov/rmpolicy/ads/updates.htm> (under Update 3).

## 6. Grants to Non-Profit Organizations

Funds appropriated under the ARRA can, under certain circumstances, be used for grants to nonprofit organizations. Such grants to nonprofit organizations cannot be made with DWSRF funds except to eligible public water systems, because only certain public water systems are eligible recipients of DWSRF project assistance that can be provided under the ARRA.

However, grants cannot be awarded to a nonprofit organization classified by the Internal Revenue Service as a 501(c)(4) organization unless that organization certifies that it will not engage in lobbying activities, even with their own funds (see Section 18 of the Lobbying Disclosure Act, 2 U.S.C.A § 1611). The rationale for any award to a nonprofit organization should be clearly explained, suitably documented, and included in the project file.

## C. MANAGEMENT OF GREEN PROJECT RESERVE

The ARRA contains the following requirement:

*“Provided further, That, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds appropriated herein for the Revolving Funds shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities:”*

To address this requirement, States should at the earliest possible time evaluate IUPs to identify, on the basis of the information provided in Attachments 7 (for CWSRF) or 8 (for DWSRF), projects that appear likely to qualify in whole or in part as Green Project Reserve projects for purposes of this requirement, as well as meet all eligibility requirements of the programs. This does not preclude a State from soliciting new projects for the Green Project Reserve at this time. If the projects in a State's IUP do not appear to contain qualifying projects

or components with a total value equal to at least 20% of the ARRA capitalization grant to the State, then this provision requires the State to make a timely and concerted solicitation for projects, with the objective of determining as soon as possible which qualifying Green Project Reserve projects it will amend its IUP to include (for the CWSRF, in the case of a Green Project Reserve project eligible under section 212, the State must add the project to its priority list as well as the IUP). States may not reject applicants if, through that rejection, less than 20% of the appropriated funds will address reserve projects. If, after 180 days, any portion of the 20% Green Project Reserve remains unaccounted for in the IUP, the State must certify in writing to EPA that the State lacks sufficient, eligible applications for these types of projects. Only after this certification is reviewed and accepted by EPA will a State be able to commit these funds to conventional projects. This certification must describe the steps the State used to identify and/or solicit Green Project Reserve projects.

In order to ensure that the Green Project Reserve is used for projects consistent with the intent of the ARRA, EPA has developed project descriptions and examples for the CWSRF (Attachment 7) and the DWSRF (Attachment 8). For both SRFs, there are certain project types that clearly meet the intent of the ARRA, and there are other project types that may or may not meet the law's intent for the Green Project Reserve. For any project to be counted toward meeting the 20% Green Project Reserve, their project files must contain documentation of the business case on which the project or project component was judged to qualify toward meeting the goal. The business case documentation requirements are more fully elaborated upon in Attachments 7 and 8.

In meeting this requirement, States can properly move forward with assistance agreements for the other 80% of the funds available for projects at the earliest possible time.

#### D. REFINANCING

Funds appropriated under the ARRA may not be used to provide assistance for the purpose of purchasing or refinancing municipal debt or restructuring outstanding SRF loans unless the initial debt was incurred on or after October 1, 2008. Congress has stated as a goal of providing these funds that funds should be used in a manner that maximizes job creation and economic benefit, and therefore, EPA encourages States to use the funds in such a manner to meet this goal.

#### E. PROHIBITION ON PURCHASE OF LAND OR EASEMENTS

The ARRA includes the following provision:

*“Provided further,* That none of the funds appropriated herein shall be available for the purchase of land or easements as authorized by section 603(c) of the

Federal Water Pollution Control Act or for activities authorized by section 1452(k) of the Safe Drinking Water Act.”

The Joint Explanatory Statement in Conference Report 111-16 articulated the intent of this provision is “to prohibit the use of both Revolving Funds for the purchase of land or easements by assistance recipients for any purpose and to prohibit other set asides under section 1452(k) of the Safe Drinking Water Act that do not directly create jobs.”

## F. DEOBLIGATION AND REALLOTMENT

### 1. Deobligation

The ARRA contains the following language:

*“Provided further, That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) that are not under contract or construction within 12 months of the date of enactment of this Act:”*

The ARRA requires the Administrator to reallocate any funds that do not meet the required deadline for contracts or construction. In order to implement this provision, EPA will immediately deobligate funds from awarded grants that are not under construction contracts or under construction by February 17, 2010.

### 2. Reallotment

In the event that funds appropriated by the ARRA are deobligated under V.F.1. above, such funds will be reallotted on the same basis as was applicable to the initial allotment of funds, in accordance with CWA §205(c) and SDWA §1452(a)(1)(E). None of the funds reallotted shall be made available to any State which was subject to reallotment. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under this appropriation. Furthermore, in order to participate in the reallotment of funds, a State must certify through an amendment to its IUP, that any additional funds will be contracted for construction within 120 days of reallotment. A State will only be eligible for reallotment for an amount equal to the total value of projects that are certified as ready to proceed in the amended IUP, but no more than an amount determined by the allotment formula. The amendment to the IUP must contain a list of projects ready to receive binding commitments within 120 days of reallotment as well as the certification that these funds will be under contract for construction within 120 days.

In order to effectively ascertain those States that will be able to participate in a potential reallotment, States are urged to begin identifying additional projects that will be ready to proceed to construction no later than 120 days after February 17, 2010, as soon as possible. If EPA

determines that reallocation is likely at the end of the 12 month period, EPA will request that all States submit a certified list of projects that will be ready to award contracts for construction within 120 days after February 17, 2010. The certified lists submitted by the States will be used to determine participation in a reallocation of funds.

#### G. 604(b) GRANTS

Guidance on the implementation of the CWA sec. 604(b) grant program will be forthcoming from the Office of Wetlands, Oceans and Watersheds.

#### **ACTIONS**

If you have not already done so, you and your staff should initiate discussions with the States to ensure proper planning is taking place to implement the ARRA. Additionally, the States should be provided with a copy of this memorandum prior to grant award to ensure that the applicant is on notice of the applicable statutory requirements before the grant is awarded.

If you have any questions concerning the contents of this memorandum, you may contact me, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661, or Charles Job, Chief, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3941.

Attachments

## **ATTACHMENT 1**

### **Sample IUP for CWSRF**

*This example IUP identifies the critical elements and minimum necessary level of detail that must be provided specifically to meet the distinctive requirements of the American Recovery and Reinvestment Act (ARRA) of 2009. Other IUP elements ordinarily required (e.g., regarding fees, leveraging, interest rates on assistance that does not include additional subsidization, etc.) must also be included in the State's capitalization grant application.*

*This is an example of the critical elements and level of detail necessary for an IUP that can serve as the basis upon which EPA can award a capitalization grant under the American Recovery and Reinvestment Act (ARRA) of 2009. EPA recognizes that some States may have already developed IUP's for 2009 to support award of their "base" CWSRF program capitalization grant. For States not having yet developed their 2009 "base" CWSRF program IUP, this example highlights those elements associated with the ARRA funding that would have to be incorporated into an IUP that you would normally develop. For those States, that have already developed their 2009 IUP, this document represents what could be included in a Supplement to their 2009 IUP (which would preclude the need to revise the existing IUP). The Agency's objective is to minimize excess paperwork and to facilitate a smooth process for award of ARRA capitalization grants while ensuring that the legislative requirements and direction of ARRA are implemented in a clear, transparent, and fully accountable manner.*

### **State of Recovery CWSRF**

#### ***[for States that previously submitted a 2009 IUP: Supplemental]* Intended Use Plan Capitalization Grant Under the American Recovery and Reinvestment Act of 2009**

#### **I. Introduction**

This Intended Use Plan (IUP) accompanies the State of Recovery's application for a \$33,400,000 capitalization grant for the Clean Water State Revolving Fund (CWSRF) program under the American Recovery and Reinvestment Act (ARRA) of 2009. *[For States that previously submitted a 2009 IUP: It is considered a supplemental to the previously approved IUP for 2009 that was provided to EPA.]*

#### **II. CWSRF Program Goals**

The State of Recovery is committed to using the capitalization grant for which it is applying to provide assistance to wastewater, nonpoint source and estuary projects which will proceed quickly to construction, creating jobs and furthering the water quality objectives of the Clean Water Act. The State of Recovery's goal is to enter into binding commitments for projects, which will proceed to construction or award of construction contracts by February 17, 2010.

The State of Recovery recognizes that the goal of the ARRA is to expeditiously fund eligible projects that simultaneously will create jobs, promote economic recovery, and generate long-term benefits from infrastructure investment. In this grant, the State is being called upon to accomplish goals that may not previously have been priorities in its base SRF program. Some priorities and activities in the State’s base program that may not practically be attainable within the timeframes associated with the ARRA will be pursued using funds made available through the base CWSRF program.

### III. Sources and Uses of Funds

The State of Recovery is applying for a capitalization grant in the amount of \$33,400,000. This represents the amount that the State is eligible to receive under the State’s allocation from the supplemental appropriation enacted under the ARRA. *[Note that the ARRA has waived the State match that the State is normally required to provide in order to receive a capitalization grant.]*

*[For States choosing to transfer funds between the SRF grants (note that this bracketed text is included for illustrative purposes only and no inter-fund transfer is otherwise reflected in this example IUP). The State of Recovery intends to transfer \$X,000,000 from the CWSRF capitalization grant it will receive under the ARRA to the DWSRF grant. The State acknowledges that the only transfer of funds that is permissible under the ARRA appropriation is between these two capitalization grants, and commits to manage and expend all funds thus transferred consistent with the requirements of the ARRA.]*

Table 1 summarizes the sources and uses of the capitalization grant for which the State is applying:

**Table 1  
Sources and Uses of Capitalization Grant**

<b>SOURCES</b>	<b>AMOUNT</b>
<b>Capitalization Grant</b>	<b>\$33,400,000</b>
<b>USES</b>	
<b>Project Assistance Loans</b>	
Program loans	\$ 8,684,000
Green Project Reserve loans	\$ 6,680,000
<b>Project Assistance Subsidization</b>	\$ 16,700,000
<b>Administration (4 percent)</b>	\$ 1,336,000
<b>TOTAL USES</b>	<b>\$33,400,000</b>

## **IV. Criteria and Methods for Distribution of Funds**

### **A. Project List**

The State conducted a comprehensive outreach campaign to alert potential borrowers of federal plans to provide economic recovery stimulus funding. In December 2008, notices were sent to the CWSRF mailing list (12,000 local contacts), emails were distributed, and a new web site went on-line that covered the economic recovery loan application process. Information was updated as details of the stimulus funding changed and became finalized at the federal level. The state has focused on reaching out to communities with ready to go projects and those that may be eligible for principal forgiveness subsidy assistance. As a result of this effort the CWSRF program has identified over \$500 million in eligible projects that could be ready to proceed to construction within the time deadlines established by the ARRA. The attached project list includes projects that have been assessed through the CWSRF prioritization process.

### **B. Additional Subsidization**

The ARRA requires that not less than 50% of assistance provided is in the form of additional subsidies. The State of Recovery, under the authority of Governor Fogg Emergency Order Number EX-12345, dated February 16, 2009, has authority to offer principal forgiveness and negative interest loans in an amount up to 100% of the value of a loan made by the State's CWSRF Program.

*[For a State that lacks authority to provide at least one form of statutorily required additional subsidization at the time of IUP approval, a discussion similar to the following will be necessary:][The legislature of the State of Recovery is currently considering H.B. 123, which would establish authority to provide principal forgiveness of loans. Final passage is anticipated by April 15, 2009. Immediately upon passage, Governor Fogg will issue an Emergency Rule confirming administrative authority in the Department of XX to provide assistance under the CWSRF in the form of principal forgiveness of loans.]*

The Governor's order requires that the Secretary of the State Department of Environmental Protection (DEP) establish the process and criteria for determining the amount of additional subsidy on a project specific basis in consultation with the Administrator of the State of Recovery Environmental Finance Authority. The following is the process and criteria the State will use:

*[Example A – explain same subsidy to all]* In light of the dire fiscal economic conditions now facing the residents of this State as detailed in the 2009 Financial Report that accompanied the Governor's State message, the Secretary has determined in consultation with the Administrator, that recipients of assistance under the ARRA will be provided with loans that include forgiveness of principal or negative interest rates for 50 percent of the total amount of assistance they receive.]

*[Example B – explain process and criteria for providing different subsidies]* Based on the most recent data publicly available from the State of Recovery Department of Economic and Community Development, the Secretary of DEP will place each assistance applicant in the appropriate quartile for Median Household Income for the communities in their service area, and will provide: 100% forgiveness of principal for applicants in the lowest quartile; between 75% and 99% subsidization in the form of principal forgiveness or negative interest rate loans for applicants in the second-lowest quartile; between 50% and 74% subsidization in the form of principle forgiveness or negative interest rate loans for applicants in the third-lowest quartile; and no additional subsidization for applicants in the highest quartile. The exact percentage of subsidy provided to applicants in each quartile will be based on the applicant’s MHI in relation to the others in its quartile, with consideration given to the anticipated economic benefits of the project as well as the long-term financial impact to the fund.

The attached project list demonstrates that at least 50% of the available funding for projects will be provided via principal forgiveness and negative interest loans. Any subsequent revision to this project list will likewise demonstrate that at least 50% of the available funding for projects will be provide via principal forgiveness and negative interest loans.

### **C. Green Infrastructure**

The ARA requires that, to the extent there are sufficient eligible project applications, not less than 20% of the funds provided for projects must be used for water or energy efficiency, green infrastructure, or other environmentally innovative activities. The attached project list shows that 20% of the total assistance amount of \$33,400,000 is for projects or portions of projects meeting one or more of the specific objectives required by this provision. *[Include discussion of what green infrastructure is being funded here]*

*[Example: State needs to solicit for sufficient projects:* Projects on the State of Recovery’s IUP contain qualifying components of projects that total 10 percent of the funds available for projects in the State. The State of Recovery intends to make a timely and concerted solicitation for additional projects, with the objective of determining no later than August 17, 2009 (180 days after Feb. 17 enactment) which additional qualifying projects it will amend its IUP to include in an effort to reach the 20% mark. Solicitation efforts will include a public announcement of the availability of funds and targeted meetings with associations and other groups involved in green infrastructure, water or energy efficiency improvements and other environmentally innovative activities.

### **D. Preference for Expeditious Activities**

The ARRA requires priority be given to projects that will be ready to proceed to actual construction within 12 months of the date of enactment. In anticipation of compliance with this requirement, the State of Recovery is consulting with all potential assistance recipients with projects on the project priority list and making a determination as to which of these projects can be started and completed expeditiously. After receiving a capitalization grant, the State will

provide ARRA assistance to projects who qualify for this preference.

In addition, ARRA section 1602 requires that “recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after...enactment” of the Act. The State of Recovery intends to implement this preference requirement by selecting for first ARRA funding those projects that appear most likely to be able to start construction by June 17, 2009.

#### **E. Avoidance of Reallotment/Relationship to Base Program**

In order to meet the requirements and deadlines of the ARRA for the expeditious and timely commitment and expenditure of funds, the State of Recovery will regularly review the data reported to EPA on the progress of assistance recipients under the statutory deadlines specified in this IUP to identify any issues with the timeliness of this progress. If such issues are identified, the State of Recovery intends to work with EPA to resolve such issues. The State will include conditions in its assistance agreements to ensure that assistant recipients make timely progress with respect to entering into contracts and/or construction. If a recipient fails to maintain progress with these conditions, they will receive funding from other CWSRF monies so that ARRA funding can be provided for a project that is ready to proceed.

The State understands that the U.S. Environmental Protection Agency may deobligate grant funds from States that fail to meet requirements on use of ARRA funds. However, if the State is eligible for additional funds made available by a reallotment of ARRA funds, the State will provide EPA with a list of projects from its project priority list that are immediately prepared to proceed to construction.

#### **F. Loan Terms and Fees**

*[The ARRA does not speak to the interest rates of loans that do not include additional subsidization and does not require States to change interest rates for such loans. However, the additional subsidization required by the ARRA could make the timely award of loans and contracts more challenging for any assistance recipients given loans using ARRA funds that do not include additional subsidization. Therefore, States may want to address in the loan terms discussion in their IUPs how their policies to provide assistance under this grant that does not include additional subsidization will be coordinated with the assistance that does include it, to ensure that goals and deadlines of the ARRA will be met.]*

The Recovery CWSRF Program will offer the following loan terms:

- Standard Interest Rate = 25% of Market Rate (Current Standard rate = 1.1%).  
The same rate will be offered to loans in the ongoing program.

- Repayment Term: Up to 20 Years (Up to 30 years for Extended Maturity Program Assistance)
- Loan Origination Fee: None
- Administrative Fee: 5% of the aggregate debt service divided by the number of administrative fee payments over the life of the loan, and is collected annually. The administrative fee is to help meet program operating expenses.

## **V. Public Review and Comment**

In compliance with the requirement in CWA sec. 606(c) to provide for public review and comment, the State of Recovery has posted this Intended Use Plan in draft form at [www.dep.state.recovery.gov](http://www.dep.state.recovery.gov) and in public libraries in the State beginning on February 17, 2009. The State also provided notice of the availability of this IUP to the public by announcements on that date in newspapers with a total circulation of 986,000, and all organizations and individuals on its distribution list by email, requesting all comments be submitted by March 3, 2009.

## **VI. Assurances**

The Department agrees to comply with the Federal program requirements as outlined in the Operating Agreement between EPA and the State of Recovery dated November 5, 1997, which was last amended and updated on August 21, 2006.

## VII. List of Projects to be Funded

State:

Capitalization Grant Under American Recovery and Reinvestment Act of 2009

Grant Amount Requested: \$33,400,000

Administrative Set-Aside: \$1,336,000

### CWSRF Fundable Project Priority List

Community Name	Project Type	Project Description	Permit Number	Type of Assistance	Assistance Amount	Green Project Reserve Amount*	Subsidy Amount*	Estimated Contract Date
Albion	212	Sewer rehab (Phase II)	A4589	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 650,000.00	2/3/2010
Ann Arbor	319	Landfill capping		CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 445,333.33	6/17/2009
Bakersfield	319	Landscape swales		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 222,666.67	2/16/2010
Boonsboro	212	Replacement sewer	G8759	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 1,000,000.00	5/14/2009
Chambersburg	212	WWTF improvement (Phase II)	H8773	CWSRF Loan	\$ 1,153,818.18			9/14/2009
Culpepper	212	WWTF ancillary modifications CSO WWTF and sewer separation	H8495	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 900,000.00	6/16/2009
Dayton	212	Relief interceptor	T8730	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 947,420.00	3/21/2009
Derry	212	Sewer extension	T5984	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,153,818.18	6/17/2009
Englewood	212	Sewer rehab (Phase IV)	A2940	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 900,000.00	4/26/2009
Erie	212	CSO abatement	I8093	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,153,818.18	6/14/2009
Foxboro	212	Filtration pond	G8574	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,153,818.00	12/28/2009
Frankfurt	319	WWTF upgrades		CWSRF Loan	\$ 445,333.33	\$ 445,333.33		5/31/2009
Gainsville	212	Stream bed restoration	W2948	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 700,000.00	11/25/2009
Georgetown	320	CSO construction		CWSRF Loan	\$ 445,333.33	\$ 445,333.33		6/2/2009
Hagerstown	212	Agricultural BMPs	A3499	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 700,000.00	6/17/2009
Huntsville	319	Sewer rehab (Phase II)		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 300,000.00	1/8/2010
Indianapolis	212	Landscape swales	Y8957	CWSRF Loan	\$ 1,153,818.18			5/18/2009
Jackson	319	WWTF ancillary modifications		CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 350,000.00	6/15/2009
Johnstown	212	WWTF improvement (Phase II)	A1230	CWSRF Loan	\$ 1,153,818.18			8/31/2009
Kingsford	212	Sewer extension	T9385	CWSRF Loan / Negative interest	\$ 1,153,818.18		\$ 1,000,000.00	8/17/2009
Landover	212	Erosion control	A1294	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 900,000.00	6/4/2009
Lorton	320			CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 445,000.00	5/16/2009

Manassas	212	CSO abatement	Y8749	CWSRF Loan	\$ 1,153,818.18			6/17/2009
Matthews County	320	Impervious surface removal		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 410,000.00	7/30/2009
Montgomery	212	Sewer rehab (Phase IV)	A2040	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,153,818.18	7/2/2009
Naperville	319	Filtration pond		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 260,000.00	8/17/2009
Norfolk	319	Storage tank excavation		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 445,333.33	6/16/2009
Ohio pyle	319	Agricultural BMPs		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 300,000.00	6/29/2009
Oshkosh	320	Stream bed restoration		CWSRF Loan / Negative interest	\$ 445,333.33	\$ 445,333.33	\$ 322,520.00	11/22/2009
Pottstown	212	Relief interceptor	A3456	CWSRF Loan	\$ 1,153,818.18			1/18/2010
Shelby Township	319	Septic system replacement		CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 445,000.00	5/31/2009
Silver Spring	319	Green roof		CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 275,000.00	12/8/2009
Tulsa	212	CSO construction	A0398	CWSRF Loan	\$ 1,153,818.18			2/1/2009
Utica	212	Replacement sewer	I2954	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,150,000.00	8/17/2009
Valparaiso	212	WWTF ancillary modifications	B3949	CWSRF Loan / Principal forgiveness	\$ 1,153,818.18		\$ 1,000,000.00	2/16/2010
Winchester	212	Relief interceptor	V2048	CWSRF Loan	\$ 1,153,818.18			6/28/2009
Woodbridge	319	Infiltration basins		CWSRF Loan / Principal forgiveness	\$ 445,333.33	\$ 445,333.33	\$ 80,000.00	10/26/2009
					<b>\$ 32,064,000.00</b>	<b>\$ 6,680,000.00</b>	<b>\$ 18,763,545.88</b>	

**CWSRF-Eligible Projects Below the Funding Line**

Community Name	Project Type	Project Description	Permit Number	Type of Assistance	Assistance Amount	Green Project Reserve Amount	Subsidy Amount	
Germantown	212	Replacement sewer	H8947	CWSRF Loan	\$ 2,164,000.00			6/29/2009
St. Michaels	212	WWTF ancillary modifications	B8574	CWSRF Loan	\$ 1,563,000.00			11/22/2009
Mt. Pleasant	212	Relief interceptor	K3985	CWSRF Loan	\$ 1,722,000.00			2/16/2010
Petosky	212	Sewer extension	G8479	CWSRF Loan / Principal forgiveness	\$ 885,000.00		\$ 885,000.00	7/28/2009
Rockville	212	CSO abatement	U9476	CWSRF Loan / Negative interest	\$ 6,300,000.00		\$ 3,150,000.00	7/31/2009
Strongsville	212	WWTF upgrades	I2393	CWSRF Loan / Principal forgiveness	\$ 1,200,000.00		\$ 1,200,000.00	12/8/2009
Talladega	212	CSO construction	H7485	CWSRF Loan / Negative interest	\$ 1,070,000.00		\$ 1,070,000.00	2/1/2010
Union City	212	Relief interceptor	A9874	CWSRF Loan	\$ 740,000.00			6/15/2009
Vail	212	Replacement sewer	B6984	CWSRF Loan	\$ 100,000.00			8/31/2009
Whistler	212	WWTF ancillary modifications	D0849	CWSRF Loan / Principal forgiveness	\$ 1,006,000.00		\$ 251,500.00	10/26/2009
Punxsutawney	319	Septic system replacement		CWSRF Loan	\$ 885,000.00	\$ 885,000.00		9/14/2009
Richfield	319	Landscape swales		CWSRF Loan	\$ 630,000.00	\$ 630,000.00		6/16/2009
Springfield	320	Stream bed restoration		CWSRF Loan	\$ 400,000.00	\$ 400,000.00		3/21/2009
Franklin	319	Landfill capping		CWSRF Loan / Negative interest	\$ 1,070,000.00	\$ 1,070,000.00	\$ 500,000.00	8/17/2009

Clarion	319	Filtration pond	CWSRF Loan	\$ 740,000.00	\$ 740,000.00	4/26/2009
Hazen	320	Impervious surface removal	CWSRF Loan	\$ 100,000.00	\$ 100,000.00	8/30/2009
				<b>\$ 20,575,000.00</b>	<b>\$ 3,825,000.00</b>	<b>\$ 7,056,500.00</b>

\*The information on additional subsidy and green infrastructure projects does not have to be provided in the final IUP project list at the time of grant award. The IUP project list can be revised once a State decides (1) the type(s) of additional subsidy to offer; (2) which projects will receive the subsidy; and (3) which green infrastructure projects to fund.

## **ATTACHMENT 2**

### **Sample IUP for DWSRF**

*This illustrative IUP identifies the critical elements and minimum necessary level of detail that must be provided specifically to meet the distinctive requirements of the American Recovery and Reinvestment Act (ARRA) of 2009. Other IUP elements ordinarily required by law and by the Regional Administrator (e.g., regarding fees, leveraging, interest rates on assistance that does not include additional subsidization, etc.) must also be included in the State's capitalization grant application, but must be changed from previous submissions only if the State needs to update the data and/or intends to change the policies reflected in any such element for this grant.*

*This is an example of the critical elements and minimum necessary level of detail for an IUP that can serve as the basis upon which USEPA can award a capitalization grant under the ARRA. USEPA recognizes that some States may have already developed IUP's for 2009 to support award of their "base" DWSRF program capitalization grant. For States not having yet developed their 2009 "base" DWSRF program IUP, this example highlights those elements associated with the ARRA funding that would have to be incorporated into an IUP that you would normally develop. For those States, that have already developed their 2009 IUP, this document represents what could be included in a Supplement to their 2009 IUP (which would preclude the need to revise the existing IUP). The Agency's objective is to minimize excess paperwork and to facilitate a smooth process for award of ARRA capitalization grants while ensuring that the legislative requirements and direction of ARRA are implemented in a clear, transparent, and fully accountable manner.*

### **State of Recovery DWSRF**

### **[for States that previously submitted a 2009 IUP: Supplemental] Intended Use Plan Capitalization Grant Under the American Recovery and Reinvestment Act of 2009**

March 17, 2009

#### **I. Introduction**

This Intended Use Plan (IUP) accompanies the State of Recovery's application for a \$33,400,000 capitalization grant for its DWSRF under the American Recovery and Reinvestment Act (ARRA) of 2009. [For States that previously submitted a 2009 IUP: It is considered a supplement to the previously approved IUP for 2009 that was provided to USEPA in November 2008.]

## **II. DWSRF Program Goals**

The State of Recovery is committed to using the capitalization grant for which it is applying to provide assistance to water systems for capital improvement projects which will proceed quickly to construction, creating jobs and furthering the public health protection objectives of the Safe Drinking Water Act. The State of Recovery's goal is to enter into binding commitments for projects which will proceed to construction or award of construction contracts by February 17, 2010. The State intends to award all assistance available under this capitalization grant in full conformance with the deadlines established under the ARRA and the terms and conditions of the capitalization grant award.

The State of Recovery recognizes that the goal of the ARRA is to expeditiously fund eligible projects that simultaneously will create jobs, promote economic recovery, and generate long-term benefits from infrastructure investment. In this grant, the State is being called upon to accomplish goals that may not previously have been priorities in its base SRF program. Some priorities and activities in the State's base program that may not practically be attainable within the timeframes associated with the ARRA will be pursued using funds made available through the base DWSRF program.

## **III. Sources and Uses of Funds**

The State of Recovery is applying for a capitalization grant in the amount of \$33,400,000. This represents the amount that USEPA Region 11 informed the State is eligible to receive under the State's allocation from the supplemental appropriation enacted under the ARRA. Note that the ARRA has waived the State match that the State is normally required to provide in order to receive a capitalization grant.

*[For States choosing to transfer funds between the SRF grants (note that this bracketed text is included for illustrative purposes only and no inter-fund transfer is otherwise reflected in this example IUP):* The State of Recovery intends to transfer \$X,000,000 from the CWSRF capitalization grant it will receive under the ARRA to the DWSRF grant. The State commits to manage and expend all funds thus transferred consistent with the requirements of the ARRA as outlined in the USEPA guidance.]

The State intends to take a set-aside of 4% for DWSRF program administration; a set-aside of 0.6% for small system technical assistance (which will be focused exclusively on working with the small systems on the State's Comprehensive Project Priority List to prepare these systems to be ready to proceed expeditiously to construction under the State's base DWSRF program); and a set-aside of 5.5% to support PWSS program implementation. The PWSS program support will be exclusively directed to preserving 18 positions in the program currently slated to be eliminated via lay-offs within the next 60 days (the State will provide the required 1:1 match for this 5.5% from a combination of in-kind services and credit for the State

1993 PWSS program expenditures). Workplans for the small system technical assistance set-aside and the state program management set-aside will be developed and put into effect consistent with the grant conditions required by USEPA guidance for the ARRA. The following table summarizes the sources and uses of the capitalization grant for which the State is applying:

Table 1  
Sources and Uses of Capitalization Grant

<b>SOURCES</b>	<b>Amount</b>
Capitalization Grant	\$33,400,000
<b>USES</b>	<b>Amount</b>
4% DWSRF Program Administration	\$1,336,000
0.06% Small System Technical Assistance	\$200,400
5.5% State Program Assistance for PWSS Program	\$1,837,000
Infrastructure Assistance Agreements	\$30,026,600

#### **IV. Criteria and Methods for Distribution of Funds**

*[The ARRA does not speak to the interest rates of any loans that do not include additional subsidization that States provide using funds from this grant, and does not require States to change interest rates for such loans. However, the additional subsidization required by the ARRA could make the timely award of loans and contracts more challenging for any assistance recipients given loans using ARRA funds that do not include additional subsidization. Therefore, it may be desirable for States to address in the loan terms discussion of their IUPs how their policies to provide any assistance under this grant that does not include additional subsidization will be coordinated with the assistance that does include it, to ensure that goals and deadlines of the ARRA will be met.]*

##### **A. Loan Terms and Fees**

Under the State of Recovery's traditional DWSRF program, the repayment period for loans is 20 years except for loans to recipients who qualify as disadvantaged communities, for whom the repayment period is extended to 30 years. The interest rate on all loans is 60% of the market rate as established using the "Bond Buyer 20 - Bond General Obligation Bond Index" for the preceding quarter. The State also charges a 0.25% fee on assistance recipients to help support administration of the DWSRF program.

For loan assistance provided using funds made available from the ARRA, the State will use the same process for determining loan repayment periods. However, the interest rate will be lowered to 10% of the market rate as established using the "Bond Buyer 20 - Bond General Obligation Bond Index" for the preceding quarter. The State has determined to waive fees on

recipients of assistance from ARRA funding. The State will also provide additional subsidy to identified assistance recipients as described in section IV.B. The loan terms for recipients of assistance from base DWSRF funding will remain unchanged from that described in our 2009 IUP.

## **B. Additional Subsidization**

The ARRA requires that 50% of assistance provided be in the form of additional subsidies. The State of Recovery, under the authority of Governor Phileas T. Fogg Emergency Order Number EX-12345, dated February 16, 2007, has authority to offer principal forgiveness in an amount up to 100% of the value of a loan made by the State's DWSRF Program.

*[For a State that lacks authority to provide at least one form of statutorily-required additional subsidization at the time of IUP approval, a discussion similar to the following will be necessary:][The legislature of the State of Recovery is currently considering H.B. 123, which would establish authority to provide principal forgiveness of loans. Final passage is anticipated by April 15, 2009. Immediately upon passage, Governor Phileas T. Fogg will issue an Emergency Rule confirming administrative authority in the Department of XX to provide assistance under the DWSRF in the form of principal forgiveness of loans.]*

**[The following language would fulfill the requirement of SDWA section 1452(b)(2)(B) regarding a description of “the criteria and methods established for the distribution of funds”. Such language is necessary since no State has previously had authority to provide additional subsidies outside of a disadvantaged community assistance program.]**

The Governor's order requires that the Secretary of the State Department of Health & Environmental Affairs (DHEA) (the department receiving the capitalization grant) establish the process and criteria for determining the amount of additional subsidy on a project specific basis in consultation with the Administrator of the State of Recovery Environmental Finance Authority (EFA) (the agency responsible for program administration). The following is the process and criteria the DHEA will use:

*[Example A – explain same subsidy to all]* In light of the dire fiscal economic conditions now facing the residents of this State and its governments, as detailed in the 2009 Financial Report that accompanied the Governor's State of the State message, the Secretary has determined in consultation with the Administrator that all recipients of assistance under the ARRA will be provided with loans that include forgiveness of principal for 50% of the total amount of assistance they receive.]

*[Example B – explain process and criteria for providing different subsidies]* Based on the most recent data publicly available from the State of Recovery Department of Economic and Community Development, the Secretary of DHEA will place each assistance applicant in the appropriate quintile for Median Household Income for the communities in their service area, and

will provide: 100% forgiveness of principal for applicants in the lowest quintile, 80% for applicants in the next lowest quintile, and so on, to no additional subsidization for applicants in the highest quintile.]

The attached Fundable PPL demonstrates that at least 50% of the available funding for projects will be provided via principal forgiveness. Any subsequent revision to this Fundable Project Priority list will likewise demonstrate that at least 50% of the available funding for projects will be provided via principal forgiveness.

### **C. Green Infrastructure**

The ARRA requires that, to the extent there are sufficient eligible project applications, not less than 20% of the funds provided for projects be used for water efficiency, energy efficiency, green infrastructure, or other environmentally innovative activities. The projects listed in the attached Fundable Project Priority List includes 4 projects with a total assistance amount of \$21.9 million (out of \$30 million requested in this IUP) that are designated on the List as meeting one or more of the specific objectives required by this provision. Where it is not clear that a project or component qualifies to be included as counting towards the 20% requirement, the files for such project will contain documentation of the business case on which the project was judged to qualify, as described in Attachment 8 to the USEPA guidance for the ARRA. Projects on the List meeting one or more objectives are designated as follows: Green Infrastructure = G; Energy Efficiency = E, Water Efficiency = W, Other Environmentally Innovative Activity = O.

*[Example 1: Fundable list has sufficient projects with qualifying components: Four projects listed on the attached Fundable Project Priority list have been identified as qualifying as green infrastructure projects for purposes of this requirement, based upon USEPA guidance. The State has determined that the components of the projects that qualify towards the green project reserve totals \$8.3 million. As the 20% requirement for the State of Recovery amounts to a required total of \$6 million, the State has met this requirement of the ARRA.]*

*[Example 2: Projects of sufficient value are on both priority lists: Projects on the State of Recovery's Fundable Project Priority List appear to contain qualifying components of a total value of 10 percent of the funds available for projects in the State, but the State believes that there are sufficient projects with such qualifying components of a value of at least an additional 10 percent of the funds on the State's Comprehensive Project List. The State intends to work with these projects to ensure that they will be ready to proceed within the time frames required by the ARRA to meet this requirement.]*

*[Example 3: State needs to solicit for sufficient projects: Projects on the State of Recovery's Fundable Project Priority List appear to contain qualifying components of a total value of 10 percent of the funds available for projects in the State. The State of Recovery intends to make a timely and concerted solicitation for additional projects, with the objective of determining no later than August 17, 2009 [180 days after a Feb. 16 enactment] which additional*

qualifying green infrastructure projects it will amend its IUP to include in an effort to reach the 20 percent mark.]/

#### **D. Priority for Projects Ready to Proceed to Construction in 12 Months/ Preference for Expeditious Activities**

The State of Recovery has a priority system for its DWSRF program that ranks projects in accordance with criteria associated with public health, compliance and economic need. However, the ARRA requires that priority be given to projects that will be ready to proceed to actual construction within 12 months of the date of enactment.

*[Example 1: State needs to identify projects under this priority:* To implement this new priority, the State of Recovery will review and will consult with potential assistance recipients with projects on its Fundable and Comprehensive Project Priority lists, to determine which projects are most likely to be able to proceed to actual construction within the next 12 months. Projects so determined will be given priority in receiving ARRA funding.]

*[Example 2: State has already identified projects under this priority:* The State of Recovery solicited for new projects in January 2009 in anticipation of ARRA funding. The State of Recovery also consulted with all potential assistance recipients with projects on the Fundable and Comprehensive Project Priority Lists that were included in our 2009 IUP in order to determine which projects are most likely to be able to proceed to actual construction within the next 12 months. These systems have been given priority, and that priority is reflected in the ranking the project receives on the Fundable Project Priority list.] *[For States that previously submitted a 2009 IUP:* The Project Priority List included within this Supplemental IUP reflects the projects that will be funded using ARRA funds and revisions to the State's original priority list for 2009.]

In addition, ARRA section 1602 requires that "recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after ... enactment" of the ARRA. The State of Recovery intends to implement this preference requirement by selecting for first ARRA funding from among the projects with the priority determined above, those projects that, as far as it's possible to determine, appear most likely to be able to start construction by June 16.

#### **E. Avoidance of Reallotment/Relationship to Base Program**

In order to meet the requirements and deadlines of the ARRA for the expeditious and timely commitment and expenditure of funds, the State of Recovery will regularly review the data reported to USEPA on the progress of assistance recipients under the statutory deadlines specified in this IUP to identify any issues with the timeliness of this progress. If such issues are identified, the State of Recovery intends to work with USEPA to resolve such issues as may place the State at risk of reallotment if not timely resolved. The State will include conditions in

its binding commitments to ensure that assistance recipients make timely progress with respect to entering into contracts and/or construction. If a recipient fails to maintain progress with these conditions, they will receive funding from other DWSRF monies so that ARRA funding can be provided for a project that is ready to proceed.

The State understands that the USEPA may deobligate grant funds from States that fail to meet requirements on use of funds. The State of Recovery intends to avoid deobligation. If the State is eligible for additional funds made available from other States that fail to meet deadlines, the State will provide USEPA with a list of projects from its priority list that are ready to proceed to construction, and will also provide a certification through an amendment to this IUP that all funds received for these projects will be under contract for construction within 120 days of reallocation.

## **V. Public Review and Comment**

In compliance with the requirement in SDWA sec. 1452(b)(1) to provide for public review and comment, the State of Recovery posted this Intended Use Plan in draft form at [www.dhea.state.recovery.gov](http://www.dhea.state.recovery.gov) and in public libraries in the State beginning on February 17, 2009. The State also provided notice of the availability of this IUP to the public by announcements on that date in newspapers with a total circulation of 986,000, and all organizations and individuals on its distribution list by email, with a request that all comments be submitted by March 3, 2009. A total of 25 individuals submitted comments and those comments have been taken into consideration in developing this final IUP.

## VI. List of Projects to be Funded

### Fundable List

#### State of Recovery

#### DWSRF Fundable Project Priority List (revised 2009)

#### Capitalization Grant Under American Recovery and Reinvestment Act of 2009

\* These items may be "To be determined" in the PPL that is part of the final IUP that will serve as the basis for capitalization grant award

\*\* "Green projects" key: Green Infrastructure=G, Energy Efficiency=E, Water Conservation=W, Other=O

\*\*\* Not required for ARRA IUP. Is required for base program IUP.

Project Rank	Source of Funds	Assistance Recipient	Service Area Pop.	Green Proj. * **	Project Description	Estimated Date of Construction	Estimated Assistance Amount*	Interest Rate*	Principal Forgiveness*	Repayment Terms***	Green Project Reserve Amount
1	ARRA	City of Bigtown Philville Municipal	500,000	E	Replace 100 MGD Pump UV Disinfection for 200	Feb-09	\$3,100,000	1%	\$1,550,000	20 years	\$1,000,000
2	ARRA	Water Authority Travis County Water District	250,000		MGD Treatment Plant	Feb-09	\$2,000,000	1%	\$1,000,000	20 years	
3	ARRA		135,000		Replace two 1MG Elevated Storage Tanks	Feb-09	\$2,100,000	1%	\$1,050,000	20 years	
4	ARRA	City of Howard	70,000		Replace 5 miles of 8 inch diameter Distribution Pipe	Apr-09	\$4,000,000	1%	\$2,000,000	20 years	
5	ARRA	Town of Petersville	10,000	E,W	Replace 1 MGD Pump and 10 miles of 6 inch Distribution pipe	Apr-09	\$7,000,000	1%	\$3,500,000	20 years	\$2,000,000
6	ARRA	City of Charlestown	45,000	W	Rebate program to install low flow toilets and fixtures in 5,000 homes	Jul-09	\$3,800,000	1%	\$1,900,000	20 years	\$3,800,000
7	ARRA	Elizabeth Water Company	150,000	E,W	Replace 5 miles of 24 inch Transmission Main	Sep-09	\$8,000,000	1%	\$4,000,000	20 years	\$1,500,000
SUBTOTAL FOR ARRA PROJECTS							\$30,000,000	1%	\$15,000,000		\$8,300,000
8	DWSRF	Littleville Water Authority	20,000			Feb-10	\$750,000	2.5%	na	30 years	
9	DWSRF	Tinytown Water District	10,000			Mar-10	\$500,000	2.5%	na	20 years	
10	DWSRF	Midville Water District	50,000			Dec-09	\$1,200,000	2.5%	na	30 years	
11	DWSRF	City of Travisburg	120,000			Nov-09	\$2,500,000	2.5%	na	20 years	
12	DWSRF	City of Metzgerville	75,000			Feb-10	\$15,000,000	2.5%	na	20 years	
13	DWSRF	Peterstown Water	33,000			Feb-10	\$8,000,000	2.5%	na	20 years	

		Authority							
		Charlottesville Water							
14	DWSRF	District	25,000		Sep-09	\$400,000	2.5%	na	20 years
<b>SUBTOTAL FOR DWSRF PROJECTS</b>						<b>\$28,350,000</b>			

## Comprehensive List

### State of Recovery - DWSRF Comprehensive Project Priority List Capitalization Grant Under American Recovery and Reinvestment Act of 2009

Priority Score	Assistance Recipient	Estimated Assistance Amount	Estimated Project Date
450	Littleville Water Authority	\$750,000	Feb-10
420	Tinytown Water District	\$500,000	Mar-10
325	Midville Water District	\$1,200,000	Dec-09
300	City of Travisburg	\$2,500,000	Nov-09
285	City of Metzgerville	\$15,000,000	Feb-10
280	Peterstown Water Authority	\$8,000,000	Feb-10
225	Elizabeth Water Company	\$7,600,000	Sep-09
200	City of Bigtown	\$3,000,000	Feb-09
195	Charlottesville Water District	\$400,000	Sep-09
185	Cynthia County Water Authority	\$1,000,000	Sep-09
160	Philville Municipal Water Authority	\$2,000,000	Feb-09
150	Travis County Water District	\$2,100,000	Feb-09
150	City of Jackson	\$850,000	Oct-09
100	Town of Janetville	\$4,000,000	Sep-09
100	Stephens County Water District	\$12,000,000	Oct-09
100	Town of Edville	\$900,000	Feb-10
100	Borough of Joeville	\$1,100,000	Feb-10
75	City of Howard	\$3,500,000	Apr-09
75	Ace Mobile Home Park	\$325,000	Sep-09
75	City of Brewsterville	\$18,000,000	Sep-09
50	Green County Water Authority	\$45,000,000	Dec-09
25	Town of Petersville	\$6,500,000	Apr-09
25	City of Charlestown	\$3,800,000	Jul-09

**ATTACHMENT 3**

**Required Grant Conditions**

**TO BE PROVIDED AT LATER DATE**

## ATTACHMENT 4

### Required Additional Reporting Fields

	New Fields	Description	Citation
<b>Milestones</b>	Actual Under Contract Date	The date at which all ARRA funds are under contracts for construction by the assistance recipient. This field will be completed once date is known. (MM/DD/YYYY)	Title VII of ARRA, needed for reporting purposes
	Actual Construction Start Date	The actual date project construction begins. This field will be completed once date is known. (MM/DD/YYYY)	Title VII of ARRA, needed for reporting purposes
	Quarterly Completion Status	Percent of the project completed.	Sec. 1512(c)(3)(C) of ARRA
	Actual Date of Construction Completion	The actual date that project construction is completed. This field will be completed once date is known. (MM/DD/YYYY)	Title VII of ARRA, needed for reporting purposes
<b>Financial</b>	Funded with Stimulus Funds?	Checkbox: Check if any portion of project is funded with stimulus funds. Checking this box will cause stimulus-specific tracking fields to become active.	Title VII of ARRA, needed for reporting purposes
	Stimulus Assistance Amount \$	The total amount of the loan funded with stimulus money (in dollars). If 100% of the SRF loan was funded with stimulus dollars, then this field should be the same as "CWSRF Assistance Amount \$" (CWSRF) or "Loan Amount" (DWSRF).	Title VII of ARRA, needed for reporting purposes
	Was Additional Subsidization Provided?	Checkbox: yes/no (Check yes if assistance includes a negative interest loan, principal forgiveness, or grant).	Title VII of ARRA, needed for reporting purposes
	Negative Interest Loan Amount	If yes is checked for "Was Additional Subsidization Provided?", enter amount of assistance (in dollars) that is in the form of a negative interest loan, principal forgiveness, and/or grant.	Title VII of ARRA, needed for reporting purposes
	Principal Forgiveness Amount		
	Grant Amount		
<b>Econ</b>	Number of Jobs Retained or Created	Estimated number of jobs directly retained or created by the project.	Sec. 1512(c)(3)(D) of ARRA
<b>General Project</b>	Does this Project Meet the Green Project Reserve Requirement?	Checkbox: Check if project is a green infrastructure, water or energy efficiency, or other environmentally innovative project.	Title VII of ARRA, needed for reporting purposes
	Assistance Provided for Green Project Reserve Projects	The amount of assistance (in dollars) provided for green infrastructure, water or energy efficiency, or other environmentally innovative projects.	Title VII of ARRA, needed for reporting purposes
	Purpose of Project	The purpose of the project.	Sec. 1512(c)(3)(E) of ARRA
	Rationale	Rationale of the agency for funding the infrastructure investment.	Sec. 1512(c)(3)(E) of ARRA
	Agency Contact	Name of the person to contact at the agency if there are concerns with the infrastructure investment.	Sec. 1512(c)(3)(E) of ARRA
<b>Location</b>	Project Location	City and zip code in which the project is located.	Sec. 1512(c)(3) of ARRA
	Recipient Location	City and zip code of the assistance recipient.	Sec. 1512(c)(3) of ARRA
	Project Congressional District(s)	The congressional district or districts served by the project.	Sec. 1512(c)(3) of ARRA
	Recipient Congressional District	The congressional district in which the recipient is located.	Sec. 1512(c)(3) of ARRA

**ATTACHMENT 5**  
**Intended Use Plan Checklist**  
**American Recovery and Reinvestment Act (ARRA) SRF Funds**

Partial Grant \_\_\_\_\_ Conditional Grant \_\_\_\_\_ Final Grant \_\_\_\_\_

Review Item and Questions to Answer	Yes	No	N/A	Comments
<b>Introduction</b>				
<ul style="list-style-type: none"> <li>Does the IUP describe its purpose as part of the application for an ARRA capitalization grant?</li> </ul>				
<b>Program Goals</b>				
<ul style="list-style-type: none"> <li>Does the IUP make reference to the following goals of the ARRA legislation:               <ul style="list-style-type: none"> <li>Enter into binding commitments for projects which will proceed to construction or contracts for construction within one year of ARRA enactment</li> <li>Target funds to maximize job creation and economic benefits</li> </ul> </li> </ul>				
<b>Sources and Uses of Funds</b>				
<ul style="list-style-type: none"> <li>Does the IUP contain descriptions and amounts of the sources and uses of all ARRA funds?</li> <li>Does the IUP describe any plans for transferring a portion of the ARRA capitalization grant between the CWSRF and DWSRF programs?</li> <li>Does the IUP describe the amount and use of the administrative set-aside and all other DWSRF set-asides that the State plans to take from the ARRA capitalization grant?</li> </ul>				
<b>Criteria and Method for Distribution of Funds</b>				
<ul style="list-style-type: none"> <li>Does the IUP describe the State's method for determining interest rate(s) and loan terms for ARRA assistance?</li> <li>Does the IUP describe the State's method for assessing fees on ARRA assistance?</li> </ul>				
<b>Additional Subsidization</b>				
<ul style="list-style-type: none"> <li>Does the IUP describe the process and criteria the State will use to determine how it will meet the requirement to provide additional subsidization to at least 50% of ARRA assistance?</li> <li>Does the IUP describe any changes, waivers, or deviations to the State's SRF regulations or policies that have been initiated to enable compliance with all the requirements of the ARRA legislation, including the subsidization requirement?</li> <li>Does the IUP contain language describing how the State has or when it will obtain authority to provide additional subsidies as required under the ARRA?</li> </ul>				

Review Item and Questions to Answer	Yes	No	N/A	Comments
<i>Green Infrastructure</i>				
<ul style="list-style-type: none"> <li>Does the IUP describe how the State will meet the requirement to provide at least 20% of ARRA assistance to projects to be used for water efficiency, energy efficiency, green infrastructure, or other environmentally innovative activities?</li> </ul>				
<i>Priority Setting</i>				
<ul style="list-style-type: none"> <li>Does the IUP describe how the State will structure its priority setting to give preference to activities ready to proceed to construction within 12 months of ARRA enactment?</li> </ul>				
<ul style="list-style-type: none"> <li>Does the IUP describe how the State will structure its priority setting to give preference to activities that can be initiated within 120 days of ARRA enactment, towards the goal of using at least 50% of available ARRA assistance for such activities?</li> </ul>				
<i>Reallotment</i>				
<ul style="list-style-type: none"> <li>Does the IUP commit the State to regularly report and review its progress in meeting the timelines established by the ARRA legislation, and take corrective action as necessary to avoid reallotment of ARRA funds?</li> </ul>				
<ul style="list-style-type: none"> <li>Does the IUP commit the State to include conditions in its assistance agreements to ensure that assistance recipients make timely progress towards construction or entering into contracts for construction?</li> </ul>				
<ul style="list-style-type: none"> <li>Does the IUP commit the State to provide EPA with a list of additional projects to be funded, if eligible for reallotted ARRA funds?</li> </ul>				
<ul style="list-style-type: none"> <li>Does the IUP commit the State to provide certification through an amendment to the IUP that all funds received for these additional projects will be under contract for construction within 120 days of reallotment, if the State is eligible for reallotted ARRA funds?</li> </ul>				

<b>Review Item and Questions to Answer</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Comments</b>
<b>Public Review and Comment</b>				
<ul style="list-style-type: none"> <li>• Did the State provide the draft IUP for public review and comment, and provide notice of availability, prior to submitting the IUP to EPA?</li> </ul>				
<b>List of Projects to Be Funded</b>				
<ul style="list-style-type: none"> <li>• Does the list of projects to be funded include the following information for each project: <ul style="list-style-type: none"> <li>• Name of community (CWSRF) or public water system (DWSRF)</li> <li>• Permit number (CWSRF)</li> <li>• Description of the project (DWSRF)</li> <li>• Priority assigned to the project (DWSRF)</li> <li>• Size of community served (DWSRF)</li> <li>• Type of financial assistance (CWSRF), based on best info available (DWSRF)</li> <li>• Amount of financial assistance</li> <li>• Estimated date of loan closing (CWSRF), if known (DWSRF)</li> <li>• Source of assistance (ARRA funds or other SRF funds)</li> <li>• Project type as it relates to ARRA designations, if known: green infrastructure, or extra subsidization</li> </ul> </li> </ul>				
<b>Green Project Reserve</b>				
<ul style="list-style-type: none"> <li>• Does the list of projects to be funded demonstrate that at least 20% of ARRA assistance will go to projects to be used for water efficiency, energy efficiency, green infrastructure, or other environmentally innovative activities?</li> <li>• Does the IUP contain an affirmative statement that the State will actively solicit eligible “Green Reserve” projects by August 17, 2009, if sufficient projects are not identified in the IUP?</li> </ul>				
<b>Grant Payment Schedule</b>				
<ul style="list-style-type: none"> <li>• Does the IUP include a grant payment schedule that adheres to the deadlines for entering into contracts and/or construction, as set forth by the ARRA?</li> </ul>				
<b>Reporting</b>				
<ul style="list-style-type: none"> <li>• Does the IUP include a commitment to enter all projects funded by ARRA monies into the CWSRF Benefits Reporting System or DWSRF Project Tracking System on an on-going basis?</li> </ul>				

## ATTACHMENT 6

### **Listing of Cross-Cutting Federal Authorities for Assistance Subgrants Authorized Under the ARRA**

#### Environmental Authorities

- Archeological and Historic Preservation Act, Pub. L. 93-291, as amended
- Clean Air Act, Pub. L. 95-95, as amended
- Clean Water Act, Titles III, IV and V, Pub. L. 92-500, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990 as amended by Executive Order 12608
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265
- National Historic Preservation Act, Pub. L. 89-655, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-54, as amended

#### Economic and Miscellaneous Authorities

- Debarment and Suspension, Executive Order 12549
- Demonstration Cities and Metropolitan Development Act, Pub. L. 89 -754, as amended, and Executive Order 12372
- Drug-Free Workplace Act, Pub. L. 100-690
- New Restrictions on Lobbying, Section 319 of Pub. L. 101-121
- Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, and Executive Order 11738
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

#### Civil Rights, Nondiscrimination, Equal Employment Opportunity Authorities

- Age Discrimination Act, Pub. L. 94-135
- Equal Employment Opportunity, Executive Order 11246
- Section 13 of the Clean Water Act, Pub. L. 92-500
- Section 504 of the Rehabilitation Act, Pub. L. 93-112 supplemented by Executive Orders 11914 and 11250
- Title VI of the Civil Rights Act, Pub. L. 88-352

#### Disadvantaged Business Enterprise Authorities

- Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

## ATTACHMENT 7

### **CWSRF Project Descriptions and Examples for Green Project Reserve**

The ARRA requires that at least 20% of each State's capitalization grant be used to fund projects referred to as the Green Project Reserve. The following is a set of examples for projects EPA believes would be eligible. It should be noted that all project eligibility requirements otherwise applicable to the CWSRF program apply to the Green Project Reserve.

Under the Green Project Reserve in the CWSRF both entire projects may be considered for inclusion or appropriate identifiable components of larger projects may be considered for inclusion. Whatever projects or project components are included, such projects or project components must clearly advance the objectives articulated in the specific categories discussed below.

#### **Business Case Requirements for Counting Costs toward the 20% Reserve**

There are some types of projects that clearly will qualify towards the 20% Green Project Reserve, being entirely and explicitly framed as a green infrastructure or a water or energy efficiency project. However, some types of traditional projects may also have benefits that may in some cases be counted towards the 20% Green Project requirement. For such traditional projects (or portion of a project) to be counted towards the 20% requirement, the State's project files must contain documentation that the clear business case for the project (or portion) investment includes achievement of identifiable and substantial benefits that qualify as Green Project benefits.

The required documentation could be a simple memo but must indicate the basis on which this project was judged to qualify to be counted toward the 20% requirement. Such a memo would typically include direct reference to a preliminary engineering or other planning document that makes clear that the basis upon which the project (or portion) was undertaken included identifiable and substantial benefits qualifying for the Green Project Reserve.

#### **Water Efficiency**

- I. Water efficiency is the use of improved technologies and practices to deliver equal or better services with less water.
- II. Projects eligible for assistance include assistance
  - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
    - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible; to the extent practicable, such projects should be coordinated with drinking water systems and projects.
    - ii. Building activities that implement capital water efficiency projects are eligible.

- b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
    - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital water efficiency projects are eligible.
  - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
    - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital water efficiency projects are eligible.
- III.** Water efficiency projects can stand alone projects. They do not need to be part of a larger capital improvement project.
- IV.** Drinking Water Utilities may apply to the Clean Water State Revolving Fund.
- V.** Examples of projects include
- a. Installation of water meters
  - b. Retrofit or replacement of water using fixtures, fittings, equipment or appliances
  - c. Efficient landscape or irrigation equipment
  - d. Systems to recycle gray water
  - e. Reclamation, recycling, and reuse of existing rainwater, condensate, degraded water, stormwater, and/or wastewater streams.
  - f. Collection system leak detection equipment

### **Energy Efficiency**

- I.** Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works defined in Sec. 212.
- a. Web link to EPA's clean energy site <http://www.epa.gov/cleanenergy/>
  - b. Clean energy includes wind, solar, geothermal, hydroelectric, and biogas combined heat and power systems.
- II.** Projects eligible for assistance include assistance
- a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
    - i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital energy efficiency projects are eligible.
  - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
    - i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.

- ii. Building activities that implement capital energy efficiency projects are eligible.
  - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
    - i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital energy efficiency projects are eligible.
- III. Energy efficiency projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- IV. Examples of projects include
  - a. Energy efficient retrofits and upgrades to pumps and treatment processes
  - b. Leak detection equipment for treatment works
  - c. Producing clean power for 212 treatment works on site (wind, solar, hydroelectric, geothermal, biogas powered combined heat and power)<sup>3</sup>

### **Green Infrastructure**

- I. Definition: Green Infrastructure includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing 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, porous pavements and cisterns.
- II. Projects eligible for assistance include assistance
  - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
    - i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital green infrastructure projects are eligible.
  - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
    - i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital green infrastructure projects are eligible.
  - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.

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<sup>3</sup> Project file should include a calculation of the energy efficiency of the project.

- i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
  - ii. Building activities that implement capital green infrastructure projects are eligible.
- III. If a project is specifically required by a draft or final NPDES permit, then it can only be funded through Sec. 212 or Sec. 320 authority
- IV. Green infrastructure projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- V. Examples of projects include
  - a. Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits
  - b. Implementation of water harvesting and reuse programs or projects, where consistent with state and local laws and policies.
  - c. Implementation of wet weather management systems for parking areas which include: the incremental cost of porous pavement, bioretention, trees, green roofs, and other practices that mimic natural hydrology and reduce effective imperviousness at one or more scales, including constructed wetlands.
  - d. Hydromodification to establish or restore riparian buffers, floodplains, wetlands and other natural features.
  - e. Downspout disconnection to remove stormwater from combined sewers and storm sewers.
  - f. Comprehensive retrofit programs designed to keep wet weather out of all types of sewer systems using green infrastructure technologies and approaches.
  - g. Implementation of comprehensive street tree or urban forestry programs, including expansion of tree box sizes to manage additional stormwater and enhance tree health.

### **Environmentally Innovative Projects**

- I. Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.
- II. Projects eligible for assistance include assistance
  - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
    - i. Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital environmentally innovative projects are eligible.
  - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
    - i. Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project are eligible.
    - ii. Building activities that implement capital environmentally innovative projects are eligible.

- c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
  - i. Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project are eligible.
  - ii. Building activities that implement capital environmentally innovative projects are eligible.

**III.** Examples of projects include

- a. Green Infrastructure/Low Impact development stormwater projects
- b. Wetland restoration and constructed wetlands
- c. Decentralized wastewater treatment solutions to existing deficient or failing on site systems.
- d. Water reuse projects that reduce energy consumption, recharge aquifers or reduce water withdrawals and treatment costs
- e. 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.
- f. Projects that use water balance approaches (water budgets) at the project, local or state level that preserve site, local or regional hydrology. Such an effort could show-case efforts to plan and manage in a concerted manner, surface and groundwater withdrawals, stream flow (aquatic species protection), wetland and floodplain storage, groundwater recharge and regional or local reuse and harvesting strategies using a quantified methodology.
- g. Projects that facilitate adaptation of clean water programs and practices to climate change.
- h. The water quality portion of projects that demonstrate the energy savings and greenhouse reduction benefits of sustainable site design practices and the use of green stormwater infrastructure.
- i. Projects that incorporate differential uses of water based on the level of treatment to reduce the costs of treating all water to potable water standards.
- j. Projects that identify and quantify the benefits of using integrated water resources management approaches.

## **ATTACHMENT 8**

### **DWSRF Project Descriptions and Examples for Green Project Reserve**

The ARRA requires that, to the extent there are eligible project applications, a State shall use 20% of its DWSRF capitalization grant under the ARRA for green infrastructure projects to address water and energy efficiency improvements or other environmentally innovative activities. EPA is referring to this provision as creating a Green Infrastructure Reserve within each DWSRF capitalization grant. This guidance provides clarification of this provision of the law and examples of projects that might be considered for assistance from the Green Project Reserve.

EPA anticipates that “water or energy efficiency” projects will likely be the principal focus of the Green Project Reserve under the DWSRF. However, there may also be projects, or components of projects, that qualify for consideration under the Green Infrastructure Reserve in the DWSRF on the basis of application of green infrastructure or being environmentally innovative.

Under the Green Project Reserve in the DWSRF both entire projects may be considered for inclusion or appropriate identifiable components of larger projects may be considered for inclusion. Whatever projects or project components are included, such projects or project components must clearly advance the objectives articulated in the specific categories discussed below.

#### **Business Case Requirements for Counting Costs toward the 20% Reserve for Energy and Water Efficiency**

There are some types of projects that clearly will qualify towards the 20% Green Project Reserve, being entirely and explicitly framed as a green infrastructure or a water or energy efficiency project. However, some types of traditional projects may also have benefits that may in some cases be counted towards the 20% Green Project requirement. For example, lower friction afforded by a new distribution pipe could reduce the energy needed to pump water through the distribution system. For such traditional projects (or portion of a project) to be counted towards the 20% requirement, the State’s project files must contain documentation that the clear business case for the project (or portion) investment includes achievement of identifiable and substantial benefits that qualify as Green Project benefits.

The required documentation could be a simple memo but must indicate the basis on which this project was judged to qualify to be counted toward the 20% requirement. Such a memo would typically include direct reference to a preliminary engineering or other planning document that makes clear that the basis upon which the project (or portion) was undertaken included identifiable and substantial benefits qualifying for the Green Project Reserve.

Although not intended to be an exhaustive list, we have identified a number of project

and project-related costs below that could count toward the 20%. Examples that would require a business case are so noted.

### **Energy Efficiency:**

- I. Energy efficiency includes capital projects that reduce the energy consumption of eligible drinking water infrastructure projects
  - a. Web link to EPA's Better Management-Energy page  
[http://www.epa.gov/waterinfrastructure/bettermanagement\\_energy.html](http://www.epa.gov/waterinfrastructure/bettermanagement_energy.html)
  - b. Web link to EPA's clean energy site <http://www.epa.gov/cleanenergy/>
  - c. Clean energy includes wind, solar, geothermal, hydroelectric, and biogas combined heat and power systems.
- II. Eligible costs associated with energy efficiency projects may include:
  - a. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
  - b. Building activities that implement capital energy efficiency projects are eligible.
  - c. Costs associated with a utility energy audit if required as a condition of assistance
- III. Energy efficiency projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- IV. Examples of projects include, but are not limited to:
  - a. Energy efficient retrofits and upgrades to pumps and treatment processes (requires business case)
  - b. Leak detection equipment
  - c. Producing clean power for treatment systems on site (wind, solar, hydroelectric, geothermal, biogas powered combined heat and power)
  - d. Replacement or rehabilitation of distribution lines (requires business case)

### **Water Efficiency:**

- I. Water efficiency is the use of improved technologies and practices to deliver equal or better services with less water.
  - a. WaterSense program Focus on Utilities - <http://www.epa.gov/watersense/tips/util.htm>
- II. Eligible costs associated with water efficiency projects may include:
  - a. Planning and design activities for water efficiency that are reasonably expected to result in a capital project.
  - b. Purchase of water efficient fixtures, fittings, equipment, or appliances
  - c. Purchase of leak detection devices and equipment
  - d. Purchase of water meters, meter reading equipment and systems, and pipe
  - e. Construction and installation activities that implement capital water efficiency projects.
  - f. Costs associated with development of a water conservation plan if required as a condition of DWSRF assistance.
- III. Water efficiency projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- IV. Examples of projects include, but are not limited to:
  - a. Installation of water meters or automated meter reading systems

- b. Retrofit or replacement of water using fixtures, fittings, equipment or appliances (can include rebate programs)
- c. Distribution system leak detection equipment
- d. Replacement or rehabilitation of distribution lines (requires business case)

**Green Infrastructure:**

- I. Definition: Green Infrastructure includes a wide array of practices that manage wet weather to maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. In the context of the DWSRF, green infrastructure consists of site-specific practices, such as green roofs and porous pavement at drinking water utility facilities. In addition to managing rainfall, these green infrastructure technologies can simultaneously provide other benefits such as reducing energy demands.
  - a. Green infrastructure projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
  - b. Examples of projects include, but are not limited to:
    - i. Implementation of wet weather management systems for utility buildings and parking areas which include: the incremental cost of porous pavement, bioretention, trees, green roofs, and other practices that mimic natural hydrology and reduce effective imperviousness.

**Environmentally Innovative Projects:**

- I. Definition: Within the context of the DWSRF program, “environmentally innovative projects” would include those that are: (1) consistent with the underlying project eligibilities of the DWSRF program; and (2) consistent with the timelines and objectives of the ARRA; and (3) that demonstrate new and/or innovative approaches to delivering service and/or managing water resources in a more sustainable way, including projects that achieve public health protection and environmental protection objectives at the least life-cycle costs,
  - a. Environmentally innovative projects can be stand alone projects. They do not need to be part of a larger capital improvement project. Any project which a State wishes to qualify for funding from the Green Project Reserve on the basis of being an “Environmentally Innovative Project” would require business case documentation.
  - b. Examples of projects include, but are not limited to:
    - i. Projects, or components of projects, that enable the utility to adapt to the impacts of global climate change
    - ii. Projects, or components of projects, consistent with a “Total Water Management” planning framework; or other planning framework within which project life cycle costs (including infrastructure, energy consumption and other operational costs) are minimized.