

OPERATING AGREEMENT

**FOR MANAGEMENT OF THE
CLEAN WATER STATE REVOLVING FUND PROGRAM**

BETWEEN

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

AND

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X**

March 27, 2018

Section 1.0 General

1.1 PURPOSE

This Operating Agreement for Management of the Idaho Clean Water State Revolving Fund program (here after referred to as "Agreement") between the State of Idaho Department of Environmental Quality (DEQ) and United States Environmental Protection Agency Region X (EPA) establishes assigned duties and obligations for each party for management of the Idaho Clean Water State Revolving Fund program between the EPA and DEQ and supersedes the Agreement signed on April 4, 2014.

The purpose of this Agreement is to define and integrate rules, regulations, guidelines, policies, procedures and activities to be followed by EPA and DEQ in administering Idaho's Clean Water State Revolving Fund program (CWSRF), prescribed by Title VI of the Clean Water Act (CWA) as amended by the Water Quality Act of 1987, Public Law 100-4. DEQ will use the Water Pollution Control Loan Account (WPCLA) to administer the fund. This Agreement will continue from year-to-year and will be incorporated by reference into the annual capitalization grant agreement between the EPA and the DEQ. DEQ will use a state fiscal year of July 1 to June 30 for reporting purposes.

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

1.2. OBJECTIVE OF THE CWSRF PROGRAM

The primary objective of the CWSRF program is to improve Idaho's water quality by providing a continuing source of financing for projects and activities that protect or enhance water quality. This will assist Idaho communities in attaining and maintaining compliance with the Clean Water Act. Low interest financial assistance will be the primary financing mechanism.

1.3. IMPLEMENTATION OF THE OPERATING AGREEMENT

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

1.4. SUMMARY OF THE BASIC PROVISIONS OF THE OPERATING AGREEMENT

- A. The parties to this Agreement are EPA and DEQ.
- B. DEQ is responsible for the total management and conduct of the loan program.
- C. Idaho enacted enabling CWSRF legislation in 1987 (Senate Bill 1178) and in 1988 (Senate Bill 1334) to establish the WPCLA. The Idaho Code (Title 39 Chapter 36 et seq.) is Attachment 1.
- D. DEQ has adopted rules for the operation of the CWSRF (IDAPA 58.01.12) which are included as Attachment 2.
- E. DEQ has prepared operating procedures to implement a State Environmental Review

Section 2.0 Roles and Responsibilities

2.1. ROLE AND RESPONSIBILITIES OF DEQ

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

DEQ AGREES TO:

- A. Comply with Idaho Code Title 39 Chapter 36 and other applicable State laws. Revise the CWSRF program, including state rules, as needed to conform to new CWSRF federal regulations.
- B. Develop and maintain the legal authority and the resources and staffing required to carry out all aspects of the CWSRF loan program, including the technical, environmental, and financial requirements as established or referenced in this agreement.
- C. Develop an annual IUP which will include a priority list of projects for receiving financial assistance. The public will have an opportunity to review and comment on the plan in accordance with the CWSRF program rules.
- D. Operate the CWSRF program for purposes of its continuation in perpetuity.
- E. Manage the CWSRF program in accordance with this Agreement, terms of the grant agreement, the CWA as amended by the Water Quality Act of 1987, EPA program and grant regulations, guidance issued by the EPA, and Idaho Code, state rules and procedures.
- F. Ensure EPA is kept informed and up-to-date regarding the development of draft and final program policy documents, strategies, statutes, administrative rules, and technical guidance.
- G. Complete and submit a capitalization grant application to EPA if funds are available. Accept CWSRF capitalization grant payments in accordance with a negotiated payment schedule.
- H. Deposit into the WPCLA funds equaling twenty (20) percent of each grant payment on or before the date on which DEQ receives the capitalization grant payment. Unless otherwise specified in the IUP, these funds will be transferred from the WPCLA.
- I. Enter into binding commitments in an amount equal to 120 percent of each grant payment within one (1) year of receipt of the payment. Projected schedules for commitment of funds to specific projects will be provided in DEQ's IUP.
- J. Commit funds to new projects or to increase existing projects and expend and disburse all monies in an expeditious and timely manner.
- K. Expend and disburse capitalization grant monies in accordance with State laws and procedures.
- L. Use fiscal controls and accounting procedures in accordance with generally accepted

- X. Offer terms that allow repayment for up to 30 years in accordance with DEQ protocol, provided such financing does not exceed the lesser of the useful life of the underlying asset and is administered in such as way as to protect the long-term revolving nature of the CWSRF program.

2.2. ROLE AND RESPONSIBILITIES OF THE EPA

EPA AGREES TO:

- A. Provide funding by awarding capitalization grants to DEQ upon approval of a completed application and subject to the availability of appropriated funds.
- B. Provide grant funds to DEQ according to a mutually agreeable payment schedule defined in DEQ's IUP.
- C. Provide technical assistance to DEQ and assist in developing and conducting training programs.
- D. Provide advice and consultation as requested by DEQ.
- E. Inform DEQ of noncompliance and the necessary corrective action.
- F. Provide oversight through the Annual Review and Annual Audit Process.
- G. Provide DEQ with permit information relating to individual projects, including discharge limitations.
- H. In the event that the EPA identifies an instance of noncompliance it agrees to address the noncompliance in accordance with the requirements of Section 605 of the CWA, as amended by the Water Quality Act of 1987, Public Law 100-4.
- I. Carry out other activities and duties as agreed to in this document or specified in law or regulation.

Section 3.0 Program Administration

3.1. STATE ORGANIZATIONS

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

- A. **The Idaho DEQ**
 - The DEQ Water Quality Division is responsible for administration, implementation, and coordination of all activities related to the CWSRF.
 - The DEQ Fiscal Office will maintain all CWSRF fiscal records.
- B. **The Attorney General**
 - The Deputy Attorneys General assigned to DEQ will provide legal assistance related to the CWSRF. Their duties will include contract review and legal

the application for completeness and accuracy. After review, the application will be forwarded to the CWSRF Program Manager in the State Office for preparation of an offer of assistance. Assistance offers are reviewed by a Deputy Attorney General prior to signature by the Director or the Director's designee.

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

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

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

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

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

3.4. **PUBLIC PARTICIPATION**

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

Section 4.0 Financial Administration

4.1. **CAPITALIZATION GRANT PAYMENTS**

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

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

4.2. **CASH DRAWS**

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

applies to transfers regardless of fund (i.e. may apply to transfers from the CWSRF to the DWSRF, and from the DWSRF to the CWSRF).

Section 5.0 Program Documents and Reports

5.1. INTENDED USE PLAN

DEQ will develop an annual IUP that identifies the intended uses of CWSRF program funds and fees and describes how those uses support the goals of the Fund. DEQ will ensure all IUP requirements in 40 CFR 35.3150 are addressed and will develop the plan in a format and manner agreed to by EPA. DEQ will include in the IUP:

- All publicly-owned treatment works projects and non-point source control activities on the State's project priority list that are eligible for Fund assistance.
- Projects eligible for funding if additional funds become available.
- Short-term and long-term program goals and objectives.
- Information on the types of activities to be supported, including eligible categories of costs.
- Assurances and specific proposals on how the State intends to meet the requirements of CWA section 602(b)(2) (binding commitments), CWA section 602(b)(4) (expeditious and timely expenditures), and 40 CFR 35.3140 (environmental review requirements).
- The criteria and method for distribution of funds.
- A description of the criteria and method the State will use to select projects or programs to be funded.
- A summary of the procedures allowing public comment and review of the IUP.
- The anticipated sources and uses of all the fiscal year's funds will be identified.
- A description of how the funds will be allocated among the projects consistent with the amount available, the financial assistance needed, all applicable state and federal laws, IDAPA 58.01.12, and program procedures and other requirements.

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

5.2. ANNUAL REPORT

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

Specifically, the report will contain seven sections:

1. Introduction stating the period the report is prepared for and if the goals were met.
2. General program summary.
3. Description of both short-term and long-term goals and accomplishments.
4. Detailed description of the fund status, assistance activities, and relevant provisions of

6.4. **APPROVAL AND EFFECTIVE DATE**

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



Idaho Statutes

Print / Attachment 1

TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3625. DEFINITIONS. (1) "Sewage treatment works" means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Community water system" means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) "Nonprofit noncommunity water system" means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

(4) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) "Eligible construction project" means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking

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TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3626. AUTHORIZATION OF GRANTS AND LOANS - DESIGNATION OF ADMINISTERING AGENCY - RESERVATION OF FUNDS FOR OPERATIONS - CRITERIA - PRIORITY PROJECTS - ELIGIBLE PROJECTS. (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The department of environmental quality may use a portion of the interest revenues from wastewater and drinking water loans, in an amount not to exceed one percent (1%) of loans outstanding, subject to annual appropriation, for operation of the wastewater and drinking water loan programs.

(3) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(4) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(5) Pursuant to subsection (4) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

(6) The Idaho board of environmental quality through the department of environmental quality may transfer funds between the wastewater facility loan account and the drinking water loan account. Such transfers shall be listed in the annual intended use plan and approved by the Idaho board of environmental quality.



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TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3627. PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY – CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS – RULES – APPROVAL OF ATTORNEY GENERAL – AUDIT OF PAYMENTS. (1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

(2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.

(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system:

(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.

(ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.

(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to

necessary for the effective administration of the grants and loans program.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

History:

[(39-3627) 1970, ch. 87, sec. 4, p. 211; am. 1974, ch. 23, sec. 156, p. 725; am. 1974, ch. 80, sec. 3, p. 1167; am. 1977, ch. 176, sec. 3, p. 454; am. 1980, ch. 208, sec. 4, p. 476; am. 1980, ch. 280, sec. 3, p. 728; am. 1987, ch. 174, sec. 3, p. 344; am. 1988, ch. 270, sec. 2, p. 897; am. and redesign. 1995, ch. 352, sec. 11, p. 1185; am. 1999, ch. 137, sec. 12, p. 396; am. 2000, ch. 53, sec. 4, p. 106; am. 2000, ch. 363, sec. 2, p. 1201; am. 2001, ch. 103, sec. 38, p. 283; am. 2010, ch. 25, sec. 1, p. 44; am. 2011, ch. 44, sec. 1, p. 100.]

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TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3628. WATER POLLUTION CONTROL FUND ESTABLISHED. There is hereby created and established in the state treasury a separate fund to be known as the water pollution control fund. The fund shall have paid into it:

1. The moneys provided for in section 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control fund, and not to the credit of the state general fund;

2. All donations and grants from any source which may be used for the provisions of this act;

3. Any other funds which may hereafter be provided by law.

History:

[(39-3628) 1970, ch. 87, sec. 5, p. 211; am. 1987, ch. 174, sec. 4, p. 346; am. 1988, ch. 270, sec. 3, p. 899; am. and redesig. 1995, ch. 352, sec. 12, p. 1187; am. 2000, ch. 132, sec. 14, p. 329.]

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TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3629. WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED. There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it:

1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;

2. All donations and grants from any source which may be used for the provisions of this section;

3. All principal and interest repayments of loans made pursuant to this chapter;

4. Fund transfers from the drinking water loan account; and

5. Any other moneys which may hereafter be provided by law.

History:

[(39-3629) 1987, ch. 174, sec. 5, p. 347; am. 1988, ch. 270, sec. 4, p. 900; am. and redesign. 1995, ch. 352, sec. 13, p. 1187; am. 1996, ch. 345, sec. 1, p. 1155; am. 1998, ch. 16, sec. 1, p. 114; am. 2014, ch. 59, sec. 2, p. 141.]

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TITLE 39
HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3630. APPROPRIATION OF WATER POLLUTION CONTROL FUND – PURPOSE OF CHAPTER. Moneys in the water pollution control fund are hereby perpetually appropriated for the following purposes:

(1) To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.

(2) To provide payments for contracts entered into pursuant to this chapter.

(3) To provide funds to capitalize the wastewater facility loan account established in section 39-3629, Idaho Code, including the required matching share of federal capitalization funds.

(4) To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

History:

[(39-3630) 1970, ch. 87, sec. 6, p. 211; am. 1977, ch. 176, sec. 4, p. 456; am. 1980, ch. 208, sec. 5, p. 478; am. 1980, ch. 280, sec. 4, p. 730; am. 1987, ch. 174, sec. 6, p. 347; am. 1988, ch. 270, sec. 5, p. 900; am. and redesig. 1995, ch. 352, sec. 14, p. 1188; am. 1996, ch. 345, sec. 2, p. 1155; am. 1998, ch. 16, sec. 2, p. 114; am. 2000, ch. 132, sec. 15, p. 329.]

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CHAPTER 36
WATER QUALITY

39-3631. APPROPRIATION OF WASTEWATER FACILITY LOAN FUND – PURPOSE OF CHAPTER. Moneys in the wastewater facility loan fund are hereby perpetually appropriated for the following purposes:

(1) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.

(2) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of environmental quality.

History:

[(39-3631) 1988, ch. 270, sec. 6, p. 901; am. and redesign. 1995, ch. 352, sec. 15, p. 1188; am. 1996, ch. 345, sec. 3, p. 1156; am. 1998, ch. 16, sec. 3, p. 115; am. 2001, ch. 103, sec. 39, p. 285.]

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CHAPTER 36
WATER QUALITY

39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION – LIMITS ON AMOUNT OF GRANTS AND LOANS. (1) The board of environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control fund; provided, that the projected payments for such grants would not cause the projected balance in the fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the fund.

(3) The board may make loans from the wastewater facility loan fund, provided that the projected payments for such loans would not cause the projected balance in the fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the fund.

History:

[(39-3632) 1981, ch. 33, sec. 1, p. 53; am. 1987, ch. 174, sec. 7, p. 347; am. 1988, ch. 270, sec. 7, p. 901; am. and redesig. 1995, ch. 352, sec. 16, p. 1188; am. 1996, ch. 345, sec. 4, p. 1156; am. 1998, ch. 16, sec. 4, p. 115; am. 2001, ch. 103, sec. 40, p. 285.]

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HEALTH AND SAFETY
CHAPTER 36
WATER QUALITY

39-3633. WATER POLLUTION CONTROL BONDS. (1) Water pollution control bonds, as provided by section 5, article VIII of the constitution of the state of Idaho, shall be authorized by resolution of the state board of environmental quality. The bonds may be issued in one (1) or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, may mature in such amount or amounts, may bear interest at the most advantageous rate or rates available to the state at the time offered, payable semiannually, may be in such form, either coupon or registered, may carry such registration and such conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds, if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the state board of environmental quality. The bonds shall be fully negotiable within the meaning and for all purposes of the Uniform Commercial Code.

(2) The moneys derived from the sale of any bonds shall be deposited in the state treasury to the credit of the water pollution control fund for the purposes of that fund.

(3) All bonds issued pursuant to this chapter shall be obligations of the state and shall be payable in accordance with the terms of this chapter and the provisions of section 5, article VIII of the constitution of the state of Idaho.

History:

[(39-3633) 1970, ch. 87, sec. 7, p. 211; am. 1974, ch. 23, sec. 157, p. 633; am. and redesign. 1995, ch. 352, sec. 17, p. 1189; am. 2001, ch. 103, sec. 41, p. 286.]

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developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

03. **Board.** The Idaho Board of Environmental Quality. (5-8-09)
04. **Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental information document nor an environmental impact statement is required. (5-8-09)
05. **Close or Closing.** The date on which the loan recipient issues and physically delivers to the Department the bond or note evidencing the loan to the loan recipient, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-29-12)
06. **Collector Sewer.** That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)
07. **Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and start-up of the associated facilities. (3-29-12)
08. **Department.** The Idaho Department of Environmental Quality. (1-1-89)
09. **Director.** The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)
10. **Disadvantaged Community.** The service area of a wastewater treatment facility that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-29-12)
11. **Disadvantaged Loans.** Loans made to a disadvantaged community. (3-29-12)
12. **Eligible Costs.** Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)
13. **Environmental Impact Statement (EIS).** A document prepared by the applicant when the Department determines that the proposed construction project may significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. (3-29-12)
14. **Environmental Information Document (EID).** Any written environmental assessment prepared by the applicant describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an EIS is warranted. (3-29-12)
15. **Financial Management System.** Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)
16. **Finding of No Significant Impact (FONSI).** A document prepared by the Department presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and

pollution control projects rated as described in Section 020. (5-3-03)

32. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)

33. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

34. Sewer Use Ordinance/Sewer Use Resolution. An ordinance or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (5-8-09)

35. State. The state of Idaho. (12-31-91)

36. Supplemental Grants. A state funded grant awarded in conjunction with a loan from the water pollution control loan account. (3-29-12)

37. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

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

39. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

40. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

41. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

42. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

43. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

008. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8 a.m. to 5 p.m. Monday through Friday. (5-8-09)

009. (RESERVED)

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

020. INTEGRATED PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Limited loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health, sustainability, and water quality criteria. (3-29-12)

01. Purpose. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a numerical point system. Priority criteria shall contain the following points: (3-29-12)

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health -- one hundred and fifty (150) points. (5-8-09)

b. Regulatory compliance issues (e.g., noncompliance and resulting legal actions relating to infrastructure deficiencies at a wastewater facility) -- up to one hundred (100) points. (3-29-12)

c. Watershed restoration (e.g., implementation of best management practices or initiation of construction at wastewater collection and treatment facilities as part of an approved total maximum daily load plan, implementation of nonpoint source management actions in protection of a threatened water, or is part of a special water quality effort) -- up to one hundred (100) points. (3-29-12)

d. Watershed protection from impacts (e.g., improvement of beneficial use(s) in a given water body, evidence of community support, or recognition of the special status of the affected water body) -- up to one hundred (100) points. (3-29-12)

e. Preventing impacts to uses (nonpoint source pollution projects) -- up to one hundred (100) points. (3-29-12)

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

g. Affordability (current system user charges exceed state affordability guidelines) -- ten (10) points. (3-29-12)

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

04. Integrated Priority List. A list shall be developed from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (3-29-12)

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

b. Priority Target Date. An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established. (5-3-03)

c. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest

for the existing system and for upgrades. (3-29-12)

b. If a loan recipient meets the requirement of Subsections 022.02.i. and 022.02.ii., a supplemental grant may be made for the amount of the project that causes the annual user rate for wastewater service per household to exceed one and one-half percent (1 1/2%) of the median household income, subject to available funds. (3-29-12)

03. **Accrued Interest on Loans with Supplemental Grants.** Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)

023. -- 029. (RESERVED)

030. PROJECT SCOPE AND FUNDING.

Loan funds awarded under this program may be used to prepare a wastewater treatment facility planning document which identifies the cost effective and environmentally sound alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the Clean Water Act, 33 U.S.C. Sections 1381 et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative. (3-29-12)

01. **Nonpoint Source Implementation Funding.** Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (e.g., Maintenance Agreement). (3-30-01)

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. **Wastewater Treatment Facility Funding.** Projects may be funded in steps: (3-30-01)

a. Step 1. Planning document prepared in accordance with the Handbook. (3-29-12)

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)

c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)

d. Step 4. A combination of Step 2 and Step 3. (1-1-89)

e. **Combination Step Funding.** Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)

- 01. Submission of Application.** Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (5-3-03)
- 02. Application Requirements.** Applications shall contain the following documentation, as applicable: (5-3-03)
- a.** A lawful resolution passed by the governing body authorizing an elected official or officer of the applicant to execute a loan contract and sign subsequent loan disbursement requests; (5-8-09)
 - b.** Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; (5-8-09)
 - c.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum:
 - i.** Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; (5-8-09)
 - ii.** Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; (5-8-09)
 - iii.** Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)
 - iv.** Be covered by professional liability insurance in accordance with Subsection 050.05.d. of these rules. A certification of liability insurance shall be included in the application. (5-8-09)
 - d.** A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; (5-8-09)
 - e.** A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (3-29-12)
 - f.** Step 1 -- Scope of work describing the work tasks to be performed in the preparation of the planning document if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of staff hours and costs to complete the work tasks; (3-29-12)
 - g.** Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)
 - i.** Planning document, including a final environmental document and decision in accordance with Section 042; (3-29-12)
 - ii.** Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)
 - iii.** Intermunicipal service agreements between all entities within the scope of the project, if applicable; (5-8-09)
 - h.** Step 3 -- Construction: (1-1-89)
 - i.** Documented evidence of all necessary easements and land acquisition; (5-8-09)

tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning documents, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. (3-29-12)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. (5-8-09)

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

a. Costs of salaries, benefits, and expendable material the applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of mayors, city council members, attorneys, commissioners, board members, or managers; (5-8-09)

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

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

d. Planning directly related to the water pollution control projects; (5-3-03)

e. Sewer system evaluations; (5-3-03)

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

h. Landscaping; (5-3-03)

i. Removal and relocation or replacement of utilities for which the applicant is legally obligated to pay; (5-8-09)

j. Material acquired, consumed, or expended specifically for the project; (5-3-03)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

l. Preparation of an operation and maintenance manual; (5-3-03)

m. Preparation of a plan of operation; (5-3-03)

n. Start-up services; (5-3-03)

o. Project identification signs; (5-3-03)

p. Public participation for alternative selection; (5-3-03)

q. Development of user charge and financial management systems; (5-3-03)

r. Development of sewer use ordinance; (5-3-03)

s. Staffing plans and budget development; (5-3-03)

level of environmental review. Based on review of existing information, and assessment of environmental impacts, the loan recipient shall complete one (1) of the following per the Department's instruction: (3-29-12)

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-8-09)

b. Prepare an Environmental Information Document (EID) in a format specified by the Department; (5-8-09)

or

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-8-09)

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

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the planning document can be approved and the loan award can proceed; or (3-29-12)

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the loan recipient to prepare an EID. (3-29-12)

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

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders; (5-8-09)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and (5-8-09)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). (5-8-09)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a local newspaper in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the planning document. (3-29-12)

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

a. Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; (5-8-09)

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (5-8-09)

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

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; (5-8-09)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; (5-8-09)

c. Terms consistent with applicable state and federal laws pertaining to planning documents, design, and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; (3-29-12)

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors and omissions of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; (3-29-12)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the loan recipient has approved and adopted acceptable public works construction standards approved by the Department; (3-29-12)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-8-09)

g. The loan fee pursuant to Section 032; (5-8-09)

h. All loans must be fully amortized within a period not to exceed thirty (30) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The loan recipient may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (3-29-12)

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

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted accounting principles. Eligible nonpoint source water pollution control implementation funding project sponsors may be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office. (3-29-12)

052. -- 059. (RESERVED)

060. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. (3-30-01)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (1-1-89)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the

995. WAIVER OF REQUIREMENTS AND AMENDMENT OF INTEGRATED PRIORITY LIST.

01. Conditions for Waiver. The Director may amend the Integrated Priority List and grant a waiver from the requirements of these rules on a case-by-case basis upon full demonstration by the loan recipient requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules. (3-29-12)

a. Health Hazard. A significant public health hazard exists; (5-8-09)

b. Water Contamination. A significant water contamination problem exists; (5-8-09)

c. Pollution. A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; or (3-29-12)

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

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

996. -- 999. (RESERVED)

Amendment Of Integrated Priority

List 19

Affordability Criteria

Exceeded 19

Availability of Federal Funds 19

Conditions for Waiver 19

Health Hazard 19

Pollution 19

Water Contamination 19

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

A. PROGRAM PROTOCOL

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

Federal “Cross-Cutting Requirements” are those provisions in federal law which “apply by their own terms” to projects and activities receiving federal financial assistance.

ENVIRONMENTAL AUTHORITIES

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

ECONOMIC AND MISCELLANEOUS AUTHORITIES

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

Conversely, those projects that are funded with state recapitalization dollars cannot be required by DEQ to be in compliance with these requirements; however, there are Social Policy Authorities that are required of all projects. DEQ recognizes that it is crucial that all projects adhere to Federal, state and local requirements for construction and recommendations are noted in agency determinations.

SOCIAL POLICY AUTHORITIES

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

B. PROCEDURE

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

C. TERMINOLOGY

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

1. "Affecting" means acting upon.
2. "Applicant" means any community or other eligible entity (as defined by the Rules for Administration of Water Pollution Control Loans, IDAPA 58.01.12; and the Rules for Administration of Wastewater Treatment Facility Grants, IDAPA 58.01.04), who files an application for a CWSRF loan or a state planning grant.
3. "Area of Potential Effects" is the geographic area or areas (that do not have to be contiguous to the project boundaries) within which the project may cause indirect or direct alterations in the character or use of a property. This includes all direct and reasonably foreseeable indirect effects.
4. "Categorical exclusion" is the category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental information document nor an environmental impact statement is required.
5. "Categorical exclusion support document" is a written environmental assessment for the category of actions that have been excluded and for which the position has been validated by supporting documentation from appropriate consulted agencies.
6. "Cooperating agency" means any agency, other than DEQ, as the identified lead agency, which has jurisdiction by law or expertise with respect to any environmental impact

involved in a major federal action significantly affecting the quality of the human environment. Any such agency, or when the effects are on a reservation, an Indian Tribe, may, by agreement with DEQ, become a cooperating agency.

7. "Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.
8. "Effects" are results or outcomes. Two types of effects are discussed in this document:
 - a) *Direct*, which are caused by the action and occur at the same time and place.
 - b) *Indirect*, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water and other natural systems, including ecosystems.

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

9. "Environmental assessment" is a concisely written public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact; aids DEQ's compliance with the State Environmental Review Process (SERP) requirements when no environmental impact statement is necessary and shall include (a) brief discussions of the need for the proposal, (b) summary of alternatives as required by federal and state rules, (c) summary of the environmental impacts of the proposed action and alternatives with a brief discussion of potential mitigation measures, and (d) a listing of agencies and persons consulted. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects.
10. "Environmental information document (EID)" means any concisely written environmental assessment prepared by an applicant or consultant briefly describing the environmental impacts of a proposed wastewater construction project. This document will enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if a FONSI is warranted, or if the project is not feasible. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects. Required contents of the EID are fully described in Section H, Step 3 of this form.
11. "Environmental review" means the overall process undertaken by DEQ on each potential grant project and potential CWSRF loan project to determine whether the project may have a significant impact on the environment, requiring implementation of mitigation measures.

12. "Excluded action" includes those conditions or activity that allows a project to qualify for a categorical exclusion.
13. "Extraordinary circumstances" means those circumstances listed in 40 CFR 6.204 that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a categorical exclusion may not be categorically excluded. The project SERP reviewer assesses the potential for all extraordinary circumstances to be mitigated to a level below significance either through permitting requirements or as a condition of the SERP decision.
14. "Federal agency" means all executive agencies of the federal government. It does not mean the Congress, the Judiciary, or the President (including the performance of staff functions for the President in his Executive Office).
15. "Finding of no significant impact (FONSI)" means a document, prepared by DEQ, briefly presenting the reasons why an action, not categorically excluded, will not have a significant effect on the human environment and for which an environmental impact statement is not prepared. It shall include the environmental assessment or a summary of it, will generally detail mitigation measures, and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.
16. "Floodplain" is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of a 100-year flood. The 100-year flood is defined by applicable federal emergency management agency (FEMA) flood insurance maps or, if no map exists, then as defined in 40 CRF 258.11.
17. "Floodway" is the channel of a river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with a 100-year flood.
18. "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (see definitions of "effects").
19. "Loan" means a financing instrument (note or bond) by written agreement from the CWSRF.
20. "Mitigation" includes:
 - a) Avoiding the impact altogether by not taking a certain action or parts of an action
 - b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation
 - c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment
 - d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action
 - e) Compensating for the impact by replacing or providing substitute resources or environments

21. "One hundred (100) year flood" is also referred to as the base flood or the regulatory flood. This refers to an area where there is a one percent (1%) chance that a flood may occur or be exceeded in any given year. The 100-year flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed.
22. "Planning area" relates to the geographical, jurisdictional or political boundaries of the area identified in the planning document or facility planning study area that is anticipated to be served by the proposed project upon completion and for the life of the project (20 years minimum for wastewater treatment facilities and 40 years minimum for wastewater collection systems). The planning area is tied to the area impacted by the construction of the proposed project. The environmentally affected area and the planning area are not the same since the area environmentally affected by the project is not defined by jurisdictional or political boundaries, or by the same geographical boundaries as the planning area.
23. "Planning document" is a document which describes the condition of a public wastewater system and presents a cost effective and environmentally sound alternative to achieve or maintain regulatory compliance. Engineering reports and facility plans are examples of such planning documents. The planning documents shall be prepared by or under the responsible charge of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Requirements for planning documents prepared using grant funds are provided in Section 030 of IDAPA 58.01.12 and in the handbook.
24. "Proposal" exists at that stage in the development of an action when an applicant has a goal, and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed so that the final statement is completed in time for inclusion in any recommendation or report on the proposal. A proposal may exist in fact as well as by stated declaration that one exists.
25. "Responsible official" means the Department of Environmental Quality (DEQ) employee who is authorized to fulfill the requirements of these procedures.
26. "Screening-level environmental analysis" consists of assembling general information about potential environmental impacts for the purpose of alternatives comparison.
27. "Significantly" as used in this section requires considerations of context, intensity, and mitigation:
- a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects at the locale rather than in the world as a whole. Both short-term and long-term effects are relevant.
 - b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:
 - (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if DEQ believes that on balance the effect will be beneficial.

Therefore adverse impacts must not be considered as “offset” by beneficial impacts.

- (2) The degree to which the proposed action affects public health or safety, and acknowledging the highly beneficial nature of public wastewater projects when assessing the potential transient impacts of such projects.
 - (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, important farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
 - (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
 - (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
 - (6) The degree to which the action may establish a precedent for future actions with significant effects or may represent a decision in principle about a future consideration.
 - (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. However, the temporary nature of a transient impact should be an important consideration when assessing significance, depending on the particular impact (e.g., fugitive dust).
 - (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historical resources.
 - (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- c) Mitigation. Actions are not significant if they are addressed under existing consultations, rules, regulations, permits, and procedures which mitigate adverse effects.

32. “State” means the State of Idaho.

D. LEGAL FOUNDATION

1. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS. Under Section 39-105(4), Idaho Code, DEQ has the required level of authority to perform reviews. Under that section, the Department Director, when designated by the Governor, is authorized to “receive on behalf of the state, and utilize any federal aid . . . made available through the federal government, including, but not limited to, the federal water pollution

control act, for use in or by the State of Idaho in relation to health and environmental protection.” The Director has been designated by the Governor to receive and utilize Title VI funds, and he or she is authorized to perform environmental reviews of projects funded with federal money, since such authority is required to utilize such money.

Idaho’s Water Pollution Abatement Act designates the Board of the Department of Environmental Quality, through the Director, as the state authority responsible for administration of grants and loans for wastewater treatment projects funded with state and federal money, Idaho Code 39-3626(3). The Board is authorized to adopt rules necessary for the effective administration of the grant and loan program per Idaho Code 39-3627(4). Since authority to conduct environmental reviews of eligible projects is required to utilize federal funds, these provisions authorize the Board to adopt regulations governing environmental reviews of federal funded projects, and authorize the Director to implement such regulations.

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

E. THE ENVIRONMENTAL REVIEW AND THE PLANNING DOCUMENT

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

F. RESPONSIBILITIES AND COMPLIANCE

1. The loan recipient will have the following responsibilities during the environmental review process.
 - a) **Gathering Environmental Information.** The loan recipient will be responsible for gathering and incorporating screening-level environmental information regarding the project into the facility plan. This information will be used during the loan recipients’ consultation with DEQ to determine whether the project is eligible for a Categorical Exclusion (CatEx) or if an environmental information document (EID) is required.
 - b) **Agency Consultation.** The loan recipient may be responsible for some consultations with federal, state, and/or local agencies regarding the proposed project.
 - c) **Preparation of Environmental Information Documents (EID).** This will be the responsibility of the loan recipient, and will include—as appropriate—consultation with agencies having jurisdiction over environmental conditions and federal cross-

cutter regulations in order to assess potential impacts. The scope of environmental information developed, and the depth of analysis, will correlate to the severity and probability of a proposed action's potential environmental effects.

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

2. The Environmental Review responsibilities of the DEQ include:

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

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

4. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies "equivalent to" those in the Federal Administrative Procedures Act (APA), Section 39-107(6) of the Environmental Protection and Health Act, in conjunction with the Idaho Administrative Procedures Act (Idaho Code 67-5201, et seq.), provide public remedies substantially similar to the Federal APA. Both the federal and state statutes provide minimum due process rights to any person aggrieved by DEQ: an impartial decision-maker, an administrative hearing with prior notice and an opportunity to be heard and judicial review on an administrative record of final agency decisions. Compare Idaho Code 39-107(6), 67-520 1 et seq. with 5 USC 554 and 702.

G. OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

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

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

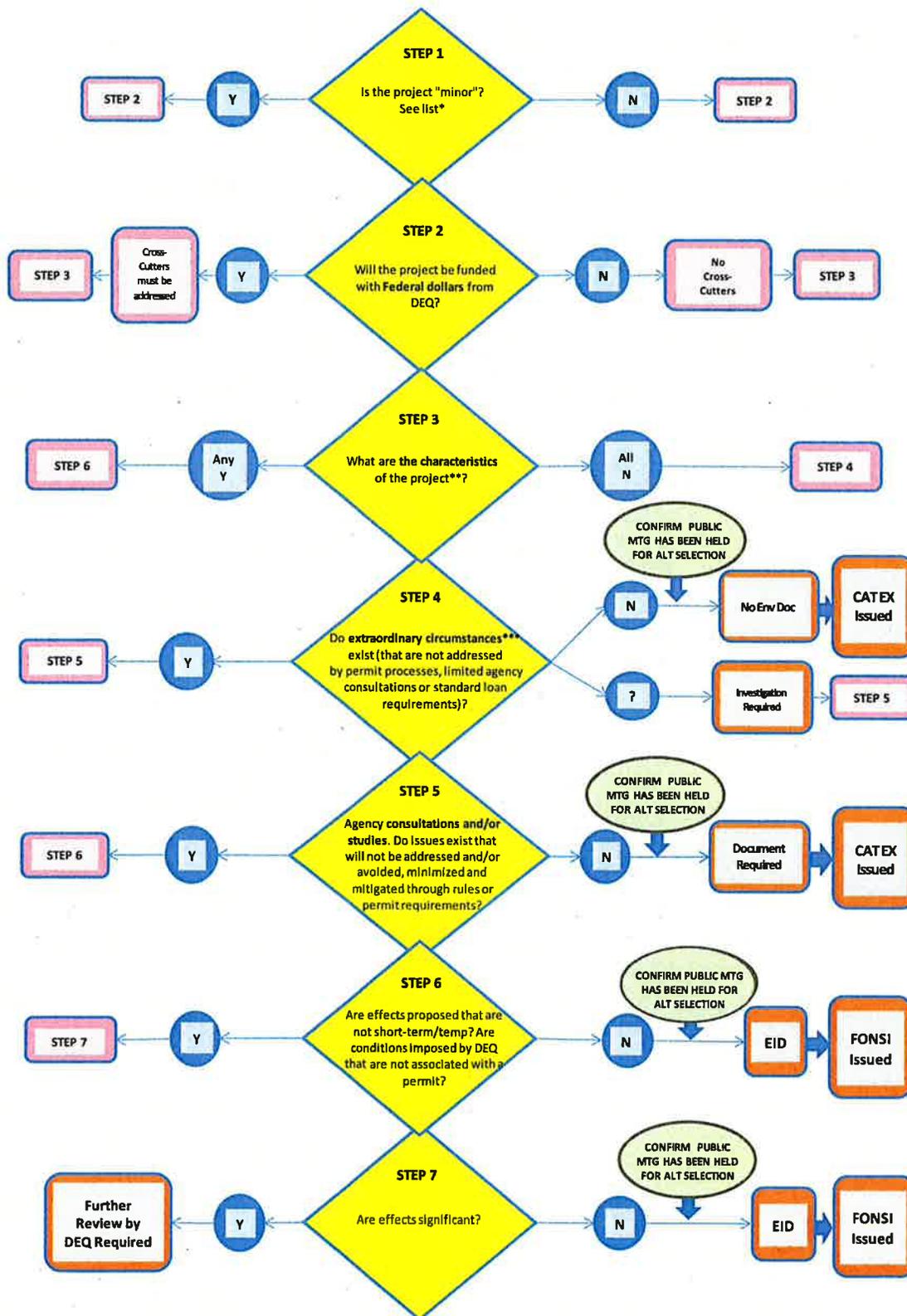


Figure 1. Categorical Exclusion Decision Tree

*** Actions that are considered "minor" (from Form 5-B/C CWSRF and DWSRF Env Review Procedures; NOTE: This listing is not comprehensive):**

- **Existing infrastructure system projects** - minor upgrading, minor expansion of system capacity or rehabilitation or construction of new minor ancillary facilities adjacent to or on the same property.

---- *Examples: functional replacement of systems, system components such as the distribution and collection networks, treatment works, storage facilities, pumps, lift stations.*

- **Unsewered communities** - project involving replacement of existing onsite systems.

- Actions for which consultation is not required because independent regulatory mechanisms inherently reduce impacts to below the level of significance.

---- *Examples: permits such as those required by Federal, state and local agencies for well installation, stream alteration, floodplain development, and waters of the U.S.*

- Installation of point of use units with a discharge of residuals to wastewater system.

- Installation of new wells.

**** Project Characteristics**

- Will the project provide capacity to serve a population projected to grow at a rate > 25% of the 20-yr population growth rate for the state AND is it expected to change the current population by > 500 estimated residential units?

- Is the project known or expected to have a significant effect on the quality of the human environment including a substantial increase in the volume or the mass of pollutant to the receiving water?

- Is there a likelihood of significant public controversy?

***** Extraordinary Circumstances (Bold = questions asked regardless of funding source)**

- **Is the proposed action known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time?**

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

- Is the proposed action known or expected to significantly affect federally listed threatened or endangered species or and significant fish or wildlife habitat?

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

- Is the proposed action known or expected to significantly affect the environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers?

- Is the proposed project known or expected to cause significant adverse air quality effects?

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

- **Is the proposed action known or expected to cause significant public controversy about a potential environmental impact of the proposed action?**

Figure 1a. Decision Tree footnotes

7. *Finalizing the grant or awarding the loan.* With issuance of the final environmental determination, a planning document can be given final approval if technical considerations have been met. Once the planning document has received final approval, the grant can be closed out, or a design and construction loan can be awarded (if, in all other respects, the loan application is complete).

8. *Monitoring.* The construction activities and post-construction operation and maintenance of the facilities are monitored by DEQ to ensure implementation of mitigation measures. In addition, the planning effort may be completed as part of the loan.

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

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

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

- In cases where a categorical exclusion with no supporting documentation is determined to be appropriate early in the planning process, the planning document need only include the minimum environmental information called for in the engineering report outline. (See Form 5-A.)
- In cases where a categorical exclusion is determined to be the most likely decision, but supporting documentation is needed to verify that stance, the planning document needs to include appropriate documentation as specified by DEQ.
- In cases when a categorical exclusion is not appropriate, the applicant shall begin scoping the content of an EID early in the planning document development process. This EID will, in final form, be suitable for issuance of a FONSI.

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

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

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

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

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

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

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

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

- (2) Known or expected to have a significant effect on the quality of the human environment either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions, including a substantial increase in the volume or the mass of pollutant to the receiving water;
 - (3) Known or expected to directly or indirectly affect (1) cultural resource sites; (2) endangered or threatened species or their habitats; (3) flood plains, wetlands, important farmlands, aquifer recharge zones; or,
 - (4) Known or expected to cause significant public controversy.
 - (5) The facilities would provide capacity to serve a population projected to:
 - a. grow at a rate 25% in excess of the 20-year population growth expectations for the state as a whole (according to the Idaho Division of Financial Management projections); and
 - b. exceed the current system's population by greater than 500 estimated residential units (ERUs).
 - (6) The action is not supported by the state or other regional growth plan or strategy
 - (7) The action directly or indirectly involves or relates to upgrading or extending infrastructure primarily for the purposes of future development. If any of the above conditions exist, the responsible official shall ensure that an EID and FONSI are prepared and issued.
- c) *Developing new categories of excluded actions.* The responsible official or other interested parties may request that a new category of excluded action be created or that an existing category be amended or deleted. The request shall be made in writing to the director of DEQ and shall contain adequate supporting information. Proposed new categories shall be evaluated by DEQ. The following shall be considered in evaluating proposals for new categories:
- (1) Actions in the proposed category should seldom result in the effects outlined below.
 - (2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EID or EIS; and
 - (3) Information adequate in determining if a potential action is consistent with the proposed category will normally be available when needed.
- d) *Extraordinary circumstances.* The responsible official will review actions eligible for categorical exclusions to ensure that no extraordinary circumstances are involved. Extraordinary circumstances include the following circumstances when they are not addressed by existing rules, regulations, permits, or other mechanisms which mitigate adverse effects. Note: DEQ action is only required for projects funded with federal dollars and water quality concerns congruent with DEQ's mission.
- (1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

- (2) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally recognized Indian tribal communities.
 - (3) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)
 - (4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places. (Note: DEQ action only required for projects funded with federal dollars.)
 - (5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat. (Note: DEQ action only required for projects funded with federal dollars and/or with water quality concerns congruent with DEQ's mission.)
 - (6) The proposed action is known or expected to cause significant adverse air quality effects. (Note: DEQ action only required for projects funded with federal dollars.)
 - (7) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally recognized Indian tribe approved land use plans or federal land management plans.
 - (8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
- e) *Proceeding with the project after the environmental determination has been issued:*
- (1) After a categorical exclusion on a proposed project has been granted and a notice has been published in the local newspaper, the planning document can be given final approval, if technical considerations have already been satisfied. With approval of the planning document, the DEQ grant can be closed out, or CWSRF loan arrangements may proceed without being subject to any further environmental review requirements, unless the responsible official determines that the project or the conditions at the time the categorical determination was made have materially changed.
 - (2) For categorical exclusion determinations five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views and, prior to a loan agreement, either:

- a. Reaffirm—Issue a public notice reaffirming DEQ’s decision to proceed with the project without need for any further environmental review in the event that nothing of a material nature has changed; or
 - b. Supplement—Update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised public notice in the event that something of a material nature has changed; or
 - c. Reassess—Revoke the categorical exclusion and require a more complete environmental review.
3. Preparing an Environmental Information Document. If the responsible official determines that issuing a categorical exclusion is not appropriate, then the applicant shall prepare an EID. The EID shall concisely address all environmental impacts, including each of the following subjects and requirements so that DEQ personnel may assist the applicant in objectively identifying potentially significant environmental concerns and their potential impacts (see Form 5-E). To avoid repetition, the EID may reference other sections of the facility plan for the specified information.

If agency consultation responses are not received within 30 days of making the request, the non-response will be treated as a “no-comment” response. Documentation of the contact shall be maintained in the SRF project file. Agency response received after 30 days will not be considered.

Note: if at any time during the preparation of the EID and agency consultations it becomes clear that the preferred alternative proposes significant impacts on a resource (see Extraordinary Circumstances) that cannot be avoided, minimized or mitigated, a second Project Scoping Meeting is necessary. Alternatives must be reconsidered for feasibility at this time, as DEQ will likely not fund a project that proposes significant impact to the environment.

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

- Evaluating environmental consequences of proposed action. The relevant impacts of the proposed action, including measures to mitigate adverse impacts shall be identified.
 - Minimizing adverse effects of the proposed action.
 - (1) Measures taken to mitigate or eliminate adverse effects shall be identified during the environmental review.
 - (2) DEQ shall accept a planning document and approve loan assistance for its implementation if the applicant has made or agreed to make changes in the project in accordance with environmental determinations made in a FONSI for an EID.
4. Decisions Resulting from the Environmental Information Document Review. The responsible official will make one of two possible decisions after evaluating known and suspected environmental impacts presented in an EID. The review and analysis of the EID will determine whether a proposed project either qualifies for a FONSI determination or may not be a feasible project. To determine if a FONSI is the appropriate environmental determination, the responsible official should have the planning document, EID for the project, the commitments for mitigation, and any other documentation deemed necessary. The responsible official will verify that any mitigation measures for impacts have been documented. Additionally, the responsible official will ensure the commitments for mitigation clearly identify: that the mitigation measures identified for implementation are enforceable, the party(s) committing to mitigation measures has the authority and ability to fulfill the commitments, and appropriate monitoring will be conducted during implementation of the mitigation measures
- a) Issuing a Finding of No Significant Impact (FONSI) Determination for an EID
- (1) Criteria for distributing a draft FONSI. If, after assessment of environmental impacts and completion of the environmental review, the responsible official determines that a FONSI is appropriate, a draft FONSI may be issued and distributed to the mailing list included in the EID or published in the newspaper of greatest distribution for the project planning area. The draft FONSI determination will be based on an independent review by DEQ of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of this document. The FONSI shall include any mitigation measures necessary to make the recommended alternative environmentally acceptable.
 - (2) Publication of the draft FONSI. A thirty (30) day public review and comment period follows publication of the draft FONSI determination. The legal notice of the draft FONSI includes the location where interested parties can review the draft FONSI, the complete planning document and EID, and provides the information for where comments are to be sent.
 - (3) Issuance of the final FONSI. After closure of the public comment period, the responsible official shall respond to all substantive comments received, incorporate any necessary revisions into the FONSI, and issue the final FONSI determination.
 - (4) Proceeding with a grant closure or the loan agreement. Once the final FONSI determination is issued for the project and the planning document is approved, the DEQ

grant may be closed out or a loan agreement may be made without preparation of an additional FONSI unless the responsible official later determines that the project or environmental conditions have changed significantly from those that underwent environmental review.

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

- a. Reaffirm. Issue a public notice reaffirming DEQ's decision to proceed with the project without revising the EID in the event nothing of a material nature has changed, or
- b. Supplement. Require an update of the EID and issue and distribute a revised FONSI in the event something of a material nature has changed, or
- c. Reassess. Withdraw the FONSI and reconsider the feasibility of the project.

I. POTENTIALLY AFFECTED AGENCIES

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

J. MONITORING FOR COMPLIANCE

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

K. ALTERNATIVE STATE ENVIRONMENTAL REVIEW PROCESS

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

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

1. The process is supported by a legal foundation which establishes state authority to review projects and activities receiving assistance.
2. The process ensures that the environmental objectives of the State are met (as listed below).
 - a) DEQ Objective #1: Implement surface and ground water quality protection using a watershed approach.
 - b) DEQ Objective #2: Reduce the pollutants in surface water to meet water quality standards and beneficial uses.
 - c) DEQ Objective #3: Protect and improve ground water quality.

- d) DEQ Objective #4: Assist/support public water systems in the delivery of safe/reliable drinking water.
 - e) DEQ Objective #5: Encourage reuse.
 - f) DEQ Objective #6: Prevent and control pollution from wastewater discharges.
3. The process requires comparative evaluation of alternatives and an accounting of beneficial and adverse consequences to the existing and future environment.
 4. The process requires adequate documentation of the information, processes and premises that influence the environmental determination.
 5. The process requires public notice of proposed projects to provide opportunity to comment on alternatives and to examine environmental review documents.

L. PUBLIC PARTICIPATION

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

1. *Applicant Duties.*

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

- (1) Public Information. The applicant provides information to interested and affected parties well in advance of decisions being made. Information may be distributed to the public by newspapers, flyers, newsletters, brochures, posting in local public areas, or whatever combination of means is needed to effectively inform the public about the proposed project and the alternatives under consideration.
- (2) Public Notice. The applicant publishes a legal notice to solicit comments and public involvement. The public comment period shall run for no less than 14 days. **The governing authority should not make a decision until after the close of the public comment period to allow consideration of public input.**

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

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

- (3) Public Meeting. The applicant will hold one public meeting after all alternatives have been developed, but before a preferred alternative has been

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

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

- b) **Voluntary Activities.** In addition to the minimum public participation requirements, the applicant may choose to hold additional public meetings to informally solicit public input during the initial environmental planning. Informal gatherings (e.g. open houses or advisory groups) can be more conducive to a free exchange of questions and answers than more formal proceedings.
2. *DEQ Duties.* DEQ has public participation responsibilities during the initial environmental planning stage of a project and also at the completion of the environmental review process that include the following three steps:
- a) **Outreach Efforts.** DEQ supports the applicant's outreach efforts during project planning and is responsible for providing information about the technical and environmental aspects of the project to the public as needed. This support may include, participating and/or speaking about the project at informal informational meetings or at public hearings, etc.
 - b) **Environmental Determination Public Comment Period.** DEQ issues an environmental determination and publishes a legal notice (commensurate with the level of environmental determination issued) to inform the public of the agency's environmental decision. For a Categorical Exclusion, this serves as the conclusion of the environmental review process. When an EID is prepared, the draft FONSI determination is issued along with a public notice to invite public comment. Upon completion of the public comment period for the draft FONSI determination, DEQ addresses relevant comments before issuing the final FONSI determination.
 - c) **When More Public Participation Is Required.** Once the minimum 14-day public participation requirement has been satisfied for the alternatives analysis or the 30-day public comment period for DEQ environmental determination, DEQ may require additional public participation procedures as deemed necessary on a project specific basis.

Form 5-C SERP Scoping Meeting

Project Name Date of Meeting

Meeting Attendees

Grant # FP Folder TRIM FP TRIM

FP approved for public comment? Yes No

Recapitalization dollars used? Yes No Notes:

Engineering Project Manager

EID Preparer, if separate

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

Project overview/description and cost:

What funding sources are being considered? SRF USDA CDBG

USACE IDWR Other Please describe:

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

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

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

Categories:

Existing footprint or adjacent to it

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

DWSRF Program:

CWSRF Program:

Drinking water POU system

Onsite WW system replacement

New or replacement well

Narrative:

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

Determine agencies to consult for DEQ

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

Conclusion**Attachments****Primary DEQ Environmental Review contact for this project**

- Aimee Hill, aimee.hill@deq.idaho.gov, (208) 373-0556
- Mike Stambulis, michael.stambulis@deq.idaho.gov, (208) 373-0123
- MaryAnna Peavey, maryanna.peavey@deq.idaho.gov, (208) 373-0122

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

Form 5-D Checklist for a Categorical Exclusion Request

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

Applicant/Borrower and
DEQ Grant or Loan Number

Environmental Reviewer

Date

Categories: Is the project "minor"?

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

Project Scope

DEQ Objectives

Does the project (add narrative below each item):

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

Comments:

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

Comments:

- Protect and improve ground water quality?

Comments:

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

Comments:

- Encourage reuse?

Comments:

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Notes:

[Empty text box for notes]

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

Applicant/Borrower and
DEQ Grant or Loan Number

Environmental Reviewer

Date

Y = yes N = no NA = not applicable

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

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

GENERAL

Scope and Content

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

Editing for Style

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

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

Public Comment Periods

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

A. PURPOSE AND NEED FOR THE PROPOSED PROJECT

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

B. PROJECT DESCRIPTION

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

C. AFFECTED ENVIRONMENT

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

1. Is a description and map of the proposed project planning area included in the facility planning document? Do the description and map take into account the following criteria? Y N
 - a) A description of the proposed project planning area (PPPA) boundaries Y N
 - b) Key topographic and geographic features of the area Y N
 - c) The population distribution Y N
 - d) Industrial and commercial features of the planning area Y N

b) Population

(1) Are the growth rates excessive because of:

- (a) exceeding by 25% the 20-year population growth rate expectations for the state (Idaho Division of Financial Management), and Y N
- (b) having a change of greater than 500 estimated residential units over the life of the project? Y N

(2) Discussion

c) Economics and social profile

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

- a) Will any low-income or minority groups be adversely affected in any way by the proposed project? Y N
- b) Are any benefits from this project going to accrue in a discriminatory manner? Y N

(2) Discussion

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

- (1) Will any part of the planned project be located within or affect a 100-year floodplain? (Attach maps used to arrive at decision with PPPA, APE, and major project features showing.) Y N
- (2) If some part of the planned facility will be located within a 100-year floodplain, and no practicable alternative to this exists, has the community indicated that measures will be included in the design of the facilities to minimize or avoid adverse effects to the floodplain? Y N NA
- (3) Will the facility be able to fully function and operate during a 100-year flood event? Y N
- (4) If the proposed project will impact a 100-year floodplain, has the applicant indicated how the public will be notified of this and how public input will be considered? Y N NA
- (5) If the project or some part of it will be in a 100-year floodplain, is the borrower currently located within a jurisdiction that is participating in the National Flood Insurance Program? Y N NA

(6) Discussion

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

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

- (1) Are there any designated threatened or endangered species or critical habitat in the proposed project planning area? DEQ shall complete the initial consultation with the USFWS on threatened/endangered species AND NMFS on threatened/endangered ocean-going fish AND Salmon Essential Fish Habitat. Y N
- (2) If listed species or habitats are present, has a biological assessment been prepared by a qualified expert for designated threatened or endangered species? Y N NA
- (3) Will the project have direct or indirect adverse impacts on any such designated species or habitats? Y N NA
- (4) If a Biological Assessment (BA) has been prepared for threatened or endangered species, did the U.S. Fish and Wildlife Service concur with DEQ's findings on the BA? Y N NA

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

- (1) Is there any Salmon EFH in the proposed project planning area? Y N
- (2) Will the project have direct or indirect adverse impacts on EFH? Y N NA
- (3) Has the NMFS provided a list of conservation recommendations if the project is adversely affecting Salmon EFH? Identify the measures proposed to avoid, minimize, or offset the impact of proposed activities on Salmon EFH. Y N NA

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

- (1) Will the project have direct or indirect adverse impacts on other fish and wildlife, or their habitats, including migratory routes, wintering, or calving areas? Y N
- (2) Does the planning area include a sensitive habitat area designated by a local, state, or federal wildlife agency? Y N

Discussion

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

- Subsurface soil conditions C Y C N
- Ground water quality C Y C N
- Depth to water C Y C N
- Ground water flow direction C Y C N
- Surface water features adjacent to the property C Y C N
- All wells and well logs within 1/4 mile C Y C N

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

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

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

- (1) Does the project have the potential to adversely affect a sole source aquifer or its stream flow source area or recharge area? C Y C N
- (2) Does the project have the potential to adversely affect a source water area for a public drinking water system? C Y C N

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

n) Reuse/land application or subsurface disposal system

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

D. MAPS, CHARTS, AND TABLES

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

- a) Idaho Department of Water Resources
- b) City or county (if enrolled in a National Flood Insurance Program)
- 6. Farmland Protection
 - a) U.S. Department of Agriculture
- 7. Wetlands
 - a) U.S. Army Corps of Engineers
- 8. Ground Water Protection
 - a) DEQ Water Quality Division and Regional Project Engineer
- 9. Air Quality (*Note: only applies to projects funded with federal dollars*)
 - a) DEQ Air Quality Division

G. MEANS TO MITIGATE ADVERSE ENVIRONMENTAL IMPACTS

1. Have mitigation measures been listed for potential impacts? Y N NA

2. Provide the list of measures.

H. PUBLIC PARTICIPATION

1. If the environmental review process has determined that something other than a categorical exclusion is appropriate, has the public been given at least 14 days to review and comment on the alternatives under consideration for the proposed project and environmental impacts of each alternative? This is to ensure that environmental information is available before decisions are made and actions are taken. The comment period begins with the date the public notice is published. The notice need not be published more than once, unless the project is highly controversial. If the project is deemed controversial, then the public notice will be tailored to suit the circumstance. The applicant should retain a copy of the public notice in the applicant's project files. Y N

2. Have dates and meeting locations for all public hearings and meetings concerning the planning document and EID been described in the EID? Include copies of the meeting minutes of when an alternative was selected. Y N

3. Have all substantive issues raised by the public in meetings, hearings, and by correspondence been described in the EID? Include copies of public comments received. Y N NA

4. Have substantive public concerns been addressed in the planning document and final environmental document? Y N NA

5. Have significant substantive comments received from state and federal agencies been described and considered in the planning document and final environmental document? Include copies of state and federal agency comments received. Y N NA

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

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by Title 39, Chapter 36 (Act), Idaho Code, to make loans from the Wastewater Treatment Facility Loan Account (Account) to assist municipalities in the construction of wastewater treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the City of Nampa (Applicant/Borrower) has established eligibility for a loan under the terms of the Act and IDAPA 58.01.12, the Idaho Rules for Administration of Water Pollution Control Loans (the Rules).

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

SECTION II. DESCRIPTION OF PROJECT

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

- A. Loan Project Number: WW1306
- B. Name and Address of Applicant: City of Nampa
411 Third Street South
Nampa, Idaho 83651
- C. Project Description: This loan is to do upgrades to the City of Nampa's wastewater treatment facility that includes modification of the existing aeration, construction of an additional aeration basin, new solids handling facility, new anaerobic digester, and installation of a chemical trim system and new pump station. The project will also include the demolition of the secondary effluent pump station, secondary clarifier #1 and trickling filter #1.
- D. Terms: \$17,000,000 at 2.00% (interest of 1.00% and loan fee of 1.00%) to be repaid in biannual installments over 20 years.

- a. The separate fair share goals for MBE and for WBE, will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals; and,
 - b. Semi-annual reports of MBE/WBE utilization will be prepared on forms supplied by the Department; and,
 - c. Include the following language in all procurement contracts *"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."*
- F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is proposed to be constructed. Clear title or legal right to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project, prior to commencement of construction. Land acquisitions shall only be reimbursed by DEQ if obtained from a willing seller.
- G. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- H. That in the event there is any default in the payment of either the principal amount, loan fee or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest and fees are due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest and fee rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- I. That any waiver by the Department at any time of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.
- J. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- K. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.
- L. To comply with all applicable federal, state and local laws.

provided for in the design specifications.

- E. Provide for the accumulation of funds through charges made for services or otherwise, for the purposes of establishing a fund dedicated solely to (1) the repayment of principal, interest and loan fee on this loan, (2) capital replacement and (3) a reserve account as required by the Terms of the loan agreement, and (4) future improvements.
- F. Provide a plan and program for an equitable user charge system for payment of operation and maintenance of constructed facilities. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment.
- G. Review and update the user charge system at least biennially during the life of this Agreement to assure that all costs including applicable debt retirement, operation and maintenance are offset by sufficient revenues.
- H. Develop and adopt a sewer use ordinance prior to receiving final payment of State loan funds.
- I. Provide an operation and maintenance manual for the system approved by the Department prior to receiving final payment of State loan funds.
- J. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- K. Assure that the operator in charge of the treatment facility has a licensure commensurate with the nature of the collection and treatment facility per the Wastewater Rules, IDAPA 58.01.16.
- L. Assure that facility personnel shall participate in operator training programs approved by the Department and designed to assure competence in the operation and maintenance of the facility.
- M. Commence satisfactory operation and maintenance of the sewage treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the treatment facility without the written approval of the Department.
- N. Provide for continuing acceptance and treatment of local septage waste, if such facilities were constructed under this Agreement.
- O. Maintain project accounts in accordance with generally accepted accounting principles.
- P. Certify whether or not the project is performing in accordance with the design performance standards after the project has been in operation for one year. If the project

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

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

- A. This loan will be evidenced and secured by a promissory note in the amount of \$17,000,000 (seventeen million dollars). The promissory note will be issued upon project completion and incorporated by reference into this Agreement.
- B. There will be a reserve fund equal to one year's payment of principal, fees and interest on the loan established. The Borrower has ten years to establish the reserve, setting aside 10% (ten percent) of one year's payment into the reserve fund each year.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loan funds shall be released to the Borrower.
- C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.
- E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.
- F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
 - 1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department, (b)

SECTION IX. PROHIBITIONS

The Borrower agrees:

Expansion of collection systems in excess of reserve capacity of the treatment works will be prohibited unless prior to expansion, provisions for adequate treatment are provided in writing by the Borrower to the Department and approved by the Department.

SECTION X. SUSPENSION OR TERMINATION OF LOAN AGREEMENT

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

SECTION XII. OFFER

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

Dated May ____, 2013.

Curt A. Fransen
Director
Department of Environmental Quality

SECTION XIII. ACCEPTANCE

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

Signature of Representative

Specimen

Name and Title of Representative - type or print

Date

DISBURSEMENT PROCESS

