

Illustrative Example

Drinking Water Revolving Loan Fund Operating Agreement

**State of New Water
Department of Health and Environment**

June 1998

**DRINKING
WATER
REVOLVING
LOAN FUND**

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I. INTRODUCTION

A. Background and Objectives of the Drinking Water State Revolving Fund Program

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104-182) created the Drinking Water State Revolving Fund (DWSRF) Program to provide financial assistance to public water systems as they construct infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. The SDWA authorizes the U.S. Environmental Protection Agency (EPA) to award capitalization grants to states which, in turn, provide low interest loans and other types of financial assistance to eligible systems.

The 1996 SDWA Amendments also establish a strong new emphasis on preventing contamination problems through source water protection and enhanced water systems management. Central to this emphasis is the development of state prevention programs, including source water protection, capacity development, and operator certification. The SDWA now gives New Water the option to use a portion of the capitalization grant to fund these eligible activities. Successful use of these funds will help ensure that the funds the state lends for infrastructure projects will be used effectively to improve system compliance and protect public health.

In response to the passage of the 1996 SDWA Amendments, the New Water Legislature established the Drinking Water Revolving Loan Fund (DWRLF) to assist public water systems to finance the costs of infrastructure needed to achieve or to maintain compliance with the SDWA requirements and to protect public health.

It is the intent of New Water that the DWRLF will help assure that the state's drinking water remains safe and affordable, that drinking water systems that receive funding will be properly operated and maintained, and that an effectively managed, permanent institution will exist to provide financial support for eligible public water systems and drinking water related needs for years to come. The state places particular emphasis on assisting drinking water systems that are small and those systems serving less affluent populations. The DWRLF will help these systems to assess, develop, and maintain their technical, managerial, and financial capabilities and will provide subsidies that will result in more affordable drinking water for those most in need.

The DWRLF is fundamentally a state program. Within the federal requirements, New Water has considerable flexibility to determine the design of its program and to direct funding toward the state's most pressing compliance and public health protection needs.

B. Purpose of the Operating Agreement

This DWRLF Operating Agreement (OA) establishes a contractual relationship between the EPA and the New Water Department of Health and Environment (NWDHE). The purpose of this OA is to

define and integrate rules, regulations, guidelines, and procedures that will be followed by EPA and the state in administering the DWRLF and are not expected to change annually. This OA specifically lists the parties to the Agreement, outlines and defines the roles and responsibilities of all of the parties involved, documents the necessary assurances, explains the financial administration framework, discusses the reporting, reviews requirements of the DWRLF program, and explains how the program will be carried out.

This OA will continue from year to year and will be incorporated by reference into the annual DWRLF capitalization grant agreement. Information that changes from year to year will be contained in the annual DWRLF capitalization grant agreement and in the Intended Use Plan (IUP).

The NWDHE agrees that any modifications to this agreement that may be required by EPA regulations, policies, or program guidance will be made and implemented where applicable on such a schedule as negotiated with EPA.

This OA addresses state requirements for the capitalization grant agreement for the DWRLF as outlined in Table 1 of the DWSRF Final Guidelines [EPA 816-R97-005].

C. Timing and Review

Upon implementation of this OA, EPA agrees to review the capitalization grant IUP application and take appropriate action within 60 days of receipt of a completed application (Application for Federal Assistance with supporting documentation and certifications and any modifications to the OA, the annual IUP and proposed payment schedule) in the Regional Office. EPA will either approve the application and award the capitalization grant, or notify the NWDHE in writing of issues requiring resolution. The NWDHE and EPA agree to negotiate promptly, cooperatively and in good faith to clarify or resolve questions which may arise during review of the capitalization grant application. The NWDHE agrees to act upon the capitalization grant offer within 21 calendar days of approval.

II. IMPLEMENTATION

A. Parties to the Agreement

The parties to this OA are the EPA Regional Office and NWDHE. NWDHE, as the primary enforcement agency for the SDWA, is designated by the State of New Water as the lead agency, which in addition to developing the IUP, performing technical project reviews, and monitoring construction, will be responsible for coordinating the total management of the DWRLF program and will be the primary contact dealing with EPA on DWRLF issues. NWDHE, as the designated instrumentality of the State of New Water (see Legislation in Attachment A), is empowered to enter into capitalization grant agreements with the Regional Administrator, to accept capitalization grant awards, and to otherwise manage the DWRLF in accordance with the requirements and objectives of the SDWA.

NWDHE has entered into a Memorandum of Understanding (MOU) with the New Water Department of Economic Development to assist in the loan applicant credit review process. The NWDHE Drinking Water Section will enter into an MOU with the Office of Administration and Accounting within NWDHE to manage separate DWRLF accounts, make loans and other forms of financial assistance to eligible public water systems and maintain funds in the DWRLF loan account, including but not limited to the federal grant, state match and loan repayments (See MOUs in Attachment B).

B. Summary of State and EPA Roles and Responsibilities

State Responsibilities

- The State of New Water has enacted enabling DWRLF legislation.
- NWDHE will be the lead agency for the DWRLF.
- NWDHE's State Environmental Review Process (SERP) has been approved by EPA. NWDHE will apply the SERP procedures described in the DWRLF application (See SERP in Attachment C).
- NWDHE will develop the annual project priority list and the IUP in accordance with Section 1452 of the SDWA, with full public comment and review during their development, and annually submit the complete grant application to EPA. The fiscal year July 1st through June 30th will be used by the state to manage the DWRLF activities.
- NWDHE will maintain a competent organization and a staff skill mix to assure that projects meet acceptable technical, environmental, and financial requirements as established or referenced in this OA and that the DWRLF will be continuously and effectively operated.

Staffing plans of all state agencies involved will be submitted as part of the annual capitalization grant application.

- NWDHE, upon receiving its capitalization grant, agrees to manage the DWRLF program in accordance with this OA, the terms of the grants agreement including grant conditions, the SDWA, and applicable regulations.

EPA Responsibilities

- EPA agrees to provide funding through the award of capitalization grants to the DWRLF upon the joint acceptance of this OA and approval of a completed application in accordance with Section 1452 and as funds are available for this purpose.
- EPA will provide technical assistance to NWDHE as needed and will be available to assist NWDHE in developing and conducting in-service training programs and will provide advice and consultation.
- EPA will allow NWDHE as much discretion and flexibility in implementing and managing a DWRLF program as is permissible under the SDWA, regulations, and EPA policy/guidance.
- EPA will oversee the DWRLF program to assure compliance with the SDWA, regulations, and EPA policy/guidance. EPA reserves the right to conduct project reviews.

If the annual review or audit reveals that the state has not complied with its capitalization grant agreement or other requirements under Section 1452, EPA will notify the state of such noncompliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet assurances or invalid certifications, is grounds for a finding of noncompliance.

C. State Assurances and Certifications

NWDHE is responsible for providing assurances in the capitalization grant agreement on how it will comply with specific requirements of the DWRLF, as well as other requirements applicable to federal funding. In some cases, NWDHE must simply agree or provide certification in the grant application that it will comply with the requirements. In other cases, additional documentation on the procedures by which NWDHE plans to ensure compliance with the requirements must be furnished. The following addresses the manner in which NWDHE will meet many of these assurances and requirements (some assurances/requirements are described in more detail elsewhere in this OA):

1. State Instrumentality and Authority

The State of New Water's DWRLF was created by legislation enacted by the New Water legislature (Attachment A). This legislation grants NWDHE the authority to adopt procedures, rules, and regulations, and establishes NWDHE as the instrumentality of the state to manage and operate the DWRLF program. The State Attorney General certifies that the legislation grants powers and authorities necessary to implement and administer the DWRLF program consistent with the SDWA as amended, and applicable regulations. The State Attorney General will submit a new certification for each federal grant application. The state agrees that NWDHE is awarded the capitalization grant and must retain ultimate responsibility for properly executing the grant agreement under EPA federal grant regulations (40 CFR 31.3).

2. Applicable State Laws and Procedures

NWDHE agrees to commit or expend each grant payment in accordance with the SDWA and all applicable state laws, statutes, policies, and procedures.

3. Review of Technical, Financial, and Managerial Capability of Assistance Recipients

NWDHE has developed a method to review and evaluate the technical, financial, and managerial capability of assistance recipients. The capacity Self-Assessment Worksheets are included in the IUP.

NWDHE requires all applicants to complete capacity assessment worksheets to demonstrate their adequacy of source water, adequacy of infrastructure, and technical knowledge. In addition, the NWDHE will review central office and local office records to assure that the system is being properly operated and maintained.

4. Payment Schedule

NWDHE will include in its annual DWRLF grant application a proposed payment schedule supported by the IUP. NWDHE agrees to accept grant payments in accordance with the payment schedule negotiated with EPA.

5. Establishment of DWRLF loan account, set-aside account and DWRLF administration account

NWDHE certifies that the DWRLF loan account is a separate account, dedicated solely to providing loans and other forms of assistance for the construction of Section 1452 public water supply systems. NWDHE agrees to deposit the capitalization grant in the designated DWRLF loan account except those portions of the grant that the NWDHE intends to use for set-aside

purposes authorized under the SDWA (Section 1452(a)(1)(B)). The state will maintain an identifiable and separate set-aside account and related sub-account(s) for the portion of the capitalization grant to be used for set-aside activities. NWDHE will document any transfer of funds from the set-aside account to the loan account and include this information in the Biennial Report. The state will maintain a separate administration account for the set-aside and generated fees used to administer the DWRLF program.

6. State Matching Funds

NWDHE agrees that state monies in an amount equaling 20 percent of the amount of each grant payment will be deposited into the loan account on or before the date that the state receives each payment from the grant award, or the state will use other measures for depositing the state match allowable under Section 1452. Each annual DWRLF grant application will include details on the source(s) of state matching funds.

In the event NWDHE elects to use up to 10% of its capitalization grant for state program management activities (as defined in the DWSRF Program Guidelines), NWDHE agrees to obtain matching funds, dollar for dollar, and deposit these funds into a set-aside sub-account.

7. Repayments/Deposits to the Loan Account

NWDHE agrees that all principal and interest payments on loans, returns on invested DWRLF funds, and net bond proceeds will be credited directly to the DWRLF loan account.

8. State Accounting and Auditing Procedures

NWDHE will establish fiscal controls and accounting systems according to Generally Accepted Accounting Principles (GAAP) sufficient to assure sound accounting procedures as promulgated by the Government Accounting Standards Board. The state agrees to follow procedures in accordance with generally accepted government auditing standards (GAGAS) issued by the Comptroller General of the United States.

9. DWRLF Loan Recipient Accounting and Auditing Procedures

NWDHE agrees that it will require DWRLF assistance recipients to maintain project accounts in accordance with GAAP and to apply GAGAS for audits conducted. This requirement will be implemented through a condition in the loan agreement.

10. Biennial Report and Annual Audit

NWDHE agrees to submit a Biennial Report and an independent annual audit to the EPA on the

actual use of funds. The Biennial Report and annual audit will fully discuss how NWDHE has met the goals and objectives for the previous fiscal year as identified in the IUP. The scope of the report and audit covers the loan account and all other non-loan account activities funded by NWDHE from funds in the DWRLF program. The contents of the report and audit will conform to what is outlined in Section VI. A. of the DWSRF Final Guidelines.

11. Procedures to Assure Borrowers have Dedicated Source of Repayment or Demonstration of Adequate Security

Prior to making a loan, the New Water DWRLF agrees to make a determination as to whether or not an applicant has the ability to repay a loan according to its terms and conditions. Criteria will evaluate an applicant's financial ability to repay the loan in addition to paying for operation and maintenance costs and other necessary expenses.

12. Timely and Expeditious Use of Funds

NWDHE agrees to commit and expend all funds in an expeditious and timely manner. NWDHE agrees to enter into binding commitments with loan recipients within one year of accepting grant payments in an amount equal to the grant and required state match deposited into the loan account. NWDHE agrees to enter into binding commitments for all loan repayments, interest earnings, or other funds available within the loan account within one year of receiving them. Projected schedules for commitment of DWRLF funds to specific projects will be provided in the annual IUP.

13. Intended Use Plan (IUP)

NWDHE agrees to prepare and include an annual IUP with the annual application for the DWRLF capitalization grant. NWDHE will provide for public review and comment on the IUP. This IUP will include:

- A list of projects proposed for assistance
- Long-term and short-term goals of the DWRLF program
- Information on DWRLF activities to be supported
- Criteria and methods for distributing DWRLF funds
- Financial status of the program
- Assurances and specific proposals

NWDHE will provide the IUP and attached information in accordance with Section 1452 and Section I.B. of the DWSRF Final Guidelines and in a format mutually agreeable to NWDHE and the Regional Administrator. NWDHE agrees to expend all DWRLF program funds in accordance with the IUP.

14. Compliance with Applicable Federal Cross-Cutting Authorities

NWDHE agrees that it will apply requirements imposed by all applicable federal cross-cutting authorities to a group of projects receiving assistance totalling the amount of the capitalization grant deposited into the DWRLF loan account. In addition, NWDHE will apply requirements imposed by all applicable cross-cutting authorities to set-aside activities receiving assistance from capitalization grant funds deposited into the set-aside account and administration account, to the extent that the requirements of the cross-cutting authorities apply. Any other funded projects and set-aside activities are not subject to the requirements of the cross-cutting authorities. NWDHE agrees that it will remain ultimately responsible for ensuring that assistance recipients comply with all applicable cross-cutting authorities. NWDHE agrees to inform EPA when consultation or coordination is necessary to resolve issues regarding compliance with those requirements. NWDHE acknowledges that applicable laws may change with time.

15. Enforceable Requirements of the Act

NWDHE agrees that all funds in the DWRLF loan account as a result of a capitalization grant (DWRLF grant funds, state match, and loan repayments) will be used for projects on the priority list and that funds deposited in set-aside accounts will be used for purposes described in an approved workplan.

16. Environmental Review

NWDHE agrees to review all DWRLF funded projects and activities in accordance with an EPA approved State Environmental Review Process (in Attachment C). The state will use an Environmental Review similar to that used in the state's Clean Water Revolving Loan Fund (CWRLF).

17. Operator Certification

NWDHE will administer an operator certification program for operators of community water supply systems (CWS) and nontransient noncommunity water supply systems (NTNCWS) in accordance with Section 1419 of the SDWA.

18. Capacity Development Authority

NWDHE has the legal authority to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, will demonstrate technical, managerial, and financial capacity. Documentation of legal authority is certified by the Attorney General of New Water..

19. Capacity Development Strategy

NWDHE agrees to develop a strategy to assist all CWS and NTNCWS in acquiring and maintaining technical, financial and managerial capacity. NWDHE will submit the state's methodology for new systems to EPA for review before September 30, 1999.

20. System to Minimize Risk of Waste, Fraud, Abuse and Corrective Action

NWDHE agrees to implement measures that will alert its staff to project deficiencies as they emerge, and will set forth state actions to correct such deficiencies as quickly as possible to preclude the need for corrective action by EPA. If the recipient of financial assistance for the state's DWRLF funds exhibits evidence of waste, fraud or abuse, the state will impose sanctions on the recipient. Section VI.B.3 of the DWSRF Final Guidelines outlines procedures and potential actions to be taken by EPA and NWDHE in the event noncompliance has been determined.

21. Development and Submittal of a Project Priority Ranking System

NWDHE has developed a project priority ranking system to determine the annual priority project list required as part of the IUP (Attachment C in the DWRLF Regulations 45-2.12). After public review and comment, the list will be submitted as part of the capitalization grant application. Bypass procedures are found in NWDHE regulation 45-2.12-c.12.

D. Financial Administration

Assistance Provided by the DWRLF Loan Account

NWDHE certifies that only the types of assistance authorized under Section 1452 of the SDWA will be provided. The type of assistance for each DWRLF project will be identified in the IUP.

1. Direct Loans

All principal and interest payments on loans will be credited directly to the DWRLF loan account. The annual repayment of principal and interest will begin no later than one year after project completion. The loan will be fully amortized no later than twenty years after project completion. Each loan recipient must establish one or more dedicated sources of revenue or security for repayment of the loan. Where construction of a project has been phased or segmented, loan repayment requirements will apply to the completion of individual phases or segments.

2. Refinancing

The DWRLF may buy or refinance municipal, intermunicipal, or interstate agencies' debt obligations at or below market rates where the initial debt was incurred and construction initiated after July 1, 1993.

3. Earn Interest on Loan Accounts

The DWRLF may earn interest on the loan accounts. Funds will not remain in the DWRLF loan account primarily to earn interest.

Assistance Provided by the Administration Account

An amount up to 4 percent of the allotment may be set aside for costs of administering the DWRLF program. A separate account has been established for the 4 percent administrative cost set-aside. Allowable administrative costs include all costs incurred for management of the DWRLF program and for management of projects receiving financial assistance from the DWRLF. Reasonable costs unique to the DWRLF, such as costs of servicing loans on issuing debt, DWRLF program start-up costs, financial management, legal consulting fees, and reimbursement costs for support services from other state agencies are also allowable. Expenses incurred issuing bonds guaranteed by the DWRLF, including costs of insuring the issue, may be absorbed by the proceeds of the bonds and need not be charged against the 4 percent administrative cost ceiling. The net proceeds of issued bonds must be deposited in the loan account.

Funding Process

The following describes how the DWRLF will use the federal funding process for eligible activities.

1. Binding Commitments

Within one year of accepting grant payments, NWDHE agrees to enter into binding commitments with loan recipients in an amount equal to the grant, required state match, repayments and any other funds deposited into the loan account. Projected schedules for commitment of DWRLF funds to specific projects will be provided in the annual IUP.

2. Payments

State Match

NWDHE agrees that state monies in an amount equal to at least 20 percent of each capitalization grant will be deposited into the DWRLF loan account. New Water's match may be made available from any or all of the following sources: state appropriations, state issued General Obligation or revenue bonds, revenues from state taxes or assessments and funds maintained in other state accounts. The source of the state match will be specified in the grant application. The 20 percent state match will be deposited in the loan account on or before the date such payments are provided by the EPA's Automated Clearinghouse payment system (EPA-ACH).

EPA-ACH Payment System

NWDHE will use the EPA-ACH Payment System and will follow EPA-ACH Payment System procedures indicated in the EPA-ACH Payment System Recipients' Manual. EPA will authorize payments from the ACH as provided for in the payment schedule shown in the assistance agreement. Once a payment has been made by increasing the amount of funds available for cash draws in the ACH Payment System, EPA will not reduce that amount. NWDHE agrees to keep DWRLF cash draws separate from those of any other programs. NWDHE agrees to follow those EPA-ACH Payment System procedures specific to the DWSRF program listed in Exhibit J of the EPA-ACH Payment System Recipients' Manual.

Payment Timing

The schedule of payments is based on the projected schedule for binding commitments included in NWDHE's annual IUP.

Separate Account

The loan account is a separate account within NWDHE's DWRLF dedicated solely to providing loans to eligible public water systems.

3. Cash Draws

Rules of Cash Draw

Cash draws from the EPA-ACH Payment System are limited by the payment schedule shown in the assistance agreement and the rules of cash draws. Money will be transferred to the DWRLF from the US Department of Treasury in accordance with established EPA-ACH Payment

System procedures. Cash draws from the EPA-ACH Payment System for loan account activities are made in proportion to the federal share of incurred eligible costs. The balance of the costs will come from matching state funds. In accordance with federal cash draw rules, if the state chooses to deposit into the DWRLF loan account more than the required 20 percent match, as is planned for SFY 1999, the proportional federal and state cash draw ratio will not be affected. All cash draws for set-asides must be as costs are incurred. Cash draws for set-aside activities will not be subject to federal-state proportionality requirements.

Loans

NWDHE may draw cash from the DWSRF-ACH when the loan account receives a request from a loan recipient, based on incurred project costs. Upon execution of a loan, cash may be drawn to pay pre-building costs such as planning and design. Cash may also be drawn to reimburse pre-building costs incurred by a recipient after 1) the recipient receives notification to proceed from the state and 2) the project has been placed on a project priority list and has undergone public review.

Refinancing and Purchase of Local Debt

For completed construction, cash draws will be made at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made, and up to the portion of the loan account committed to the refinancing or purchase of the local debt. For projects or portions of projects that have not been constructed, the cash may be drawn based on incurred construction costs according to the rule for loans. The state also has the option to immediately draw cash for up to five percent of each capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt.

4. Disbursements

Process

NWDHE will disburse funds from the loan account and from the set-aside account on the basis of incurred costs.

Construction Progress

NWDHE will conduct periodic inspections to review construction progress in order to coordinate outlay requests. Construction inspections and outlay procedures will be documented by the state.

Estimated Disbursements

During the first quarter of each federal fiscal year, NWDHE will provide EPA a schedule of estimated disbursements for the state DWRLF for the upcoming federal fiscal year. This schedule will be the basis for negotiating the state's outlay commitments.

Transfer of Funds to/from Clean Water Revolving Loan Fund

Beginning one year after a DWRLF program receives its first capitalization grant, the state may transfer up to a third of the amount of its DWRLF capitalization grants to its CWRLF or an equivalent amount from its CWRLF capitalization grant to its DWRLF (Section 302 of the SDWA Amendments of 1996). The state agrees to identify, document, and justify transfers and will submit a plan for EPA review and approval if it chooses to do so in the future.

E. Program Administration

1. Staffing and Management

NWDHE will maintain the staff and other necessary resources to effectively administer the DWRLF program.

2. Accounting and Auditing Procedures

NWDHE will use an accounting system that meets applicable federal regulations and policies regarding grants to states. The accounting system will properly identify and relate state costs to the operation of the DWRLF. To ensure that the accounting system properly reflects the full range of cost reporting needs of the program and provides for an audit trail with clearly definable bench marks, an auditor from EPA's Office of Inspector General (OIG), or a senior accountant from the financial management office of the Region may review and concur on the system's framework and operation.

NWDHE will have an annual independent audit of the DWRLF and the operation of the DWRLF. The audit will follow procedures in accordance with general accepted government auditing standards issued by the Comptroller of the United States. The audit report will be completed within one year of the appropriate accounting period and will be submitted to the Regional Administrator (RA), with a copy sent to EPA's OIG. EPA agrees to notify NWDHE within 90 calendar days as to the technical adequacy of the audit report and its findings.

3. Loan Account Perpetuity

NWDHE will consider the long-term health and viability of the loan account when selecting its mix of project categories for DWRLF funding. Each year NWDHE will assess the financial

health of the loan account by examining fund balances, sources of funds, projected levels of loan repayments, etc., and revise procedures as necessary to promote loan account perpetuity.

4. Loan Account Maintenance

NWDHE will maintain the investment of cash in the same manner as it maintains other cash reserves.

F. State Coordination

NWDHE assures that a coordinated state DWRLF will be carried out.

G. Project Management and Review Procedures

Project management and DWRLF management regulations and procedures (including project review procedures) to be followed by the NWDHE in administering projects under the DWRLF are as set forth in Department regulations (Attachment D). The NWDHE hereby agrees to review projects in accordance with those criteria and to thoroughly document the project file confirming that review.

H. Development of IUP

Each year, an IUP will be developed and presented to the public for review and comment prior to submission to EPA. The current year's project priority list as developed under the established priority system will be reviewed to determine which projects will receive funding.

Allocation of DWRLF funds among these projects is a three-step process. The type of financial assistance needed for each community is determined, the source and limits of all of the fiscal year's funds are identified, and the DWRLF funds are allocated among the projects, consistent with the amount available and the financial assistance needed. Refer to the IUP for charts and figures for the current year.

NWDHE will provide IUP information in a format and a manner that is consistent with the needs of the EPA Regional Office. NWDHE will prepare an annual IUP as long as the loan account remains in operation, not just in those years in which an application for a federal capitalization grant is submitted.

The IUP will include, but not be limited to the following:

1. List of projects, including description and size of community
2. Description of the criteria and method used for the distribution of funds

3. Description of the financial status of the DWRLF
4. Description of the long- and short-term goals of the DWRLF
5. Description of the amount transferred between the DWRLF and CWRLF
6. Description of the set-aside activities including DWRLF administrative expenses allowance, PWSS program support, technical assistance, etc.
7. Description of how the state will define a disadvantaged system and the amount of DWRLF funds that will be used for this type of loan assistance
8. Documentation, certification, and agreement to assurances and proposals in the areas including, but not limited to, environmental review, federal cross-cutters, binding commitments, and timely expenditures

As part of the IUP, NWDHE agrees to identify what portion of the capitalization grant the state is electing to use for set-aside activities. The state agrees to establish a separate set-aside account in order to accept these targeted funds. The state agrees to provide the same level of detail for projects funded through the set-aside account as is required for the loan account.

III. REPORTING AND REVIEW

A. Biennial Report

NWDHE agrees to complete and submit a Biennial Report (Section 1452 (g)(4)) detailing information on how the state has met the goals and objectives of the previous two fiscal years as stated in the IUP and grant agreement. The contents and required elements of the Biennial Report will conform with Section VI.A.I of the DWSRF Final Guidelines. The Biennial Report is required for the life of the DWRLF. The Biennial Report's submittal date will be included in the grant agreement.

The Biennial Report will describe how goals outlined in IUPs have been met. The report will include information on the program outlined in EPA guidelines, regulations and in response to negotiations with the RA. At a minimum, the report will identify assistance recipients, project descriptions, loan amounts and terms, and the financial status of the DWRLF. The report will also report on the progress of activities funded with set-aside dollars.

B. Annual Audit

NWDHE agrees to conduct and submit an annual audit in order to assure adequate financial management of the program in accordance with Section VI.A.2. of the DWSRF Final Guidelines. The audit requires a separate independent auditor's opinion on DWRLF financial statements and internal controls.

C. Annual Review

NWDHE and EPA will jointly plan the annual review process. An effective review requires the help and support of the NWDHE. However, EPA is responsible for determining whether federal requirements have been met and for assessing the state's progress toward national goals and objectives. The annual review will be completed according to the schedule established in the grant agreement.

In addition to the Biennial Report, IUP, and annual audit, NWDHE agrees that other records EPA may reasonably require will be made available to use in conducting the annual review of the DWRLF.

D. Sanctions and Compliance

1. Corrective Actions

If EPA determines that NWDHE has not complied with the terms of the capitalization grant, this OA, or the IUP, the Regional Administrator will notify the NWDHE of the noncompliance and of the corrective action or submit a plan to EPA within 60 days that will lead to compliance.

If within 60 days of receipt of the noncompliance notice, NWDHE fails to take the necessary actions to obtain the results required by EPA, or provide an acceptable plan to achieve the results required, EPA may suspend future EPA-ACH System payments to the DWRLF until NWDHE has taken acceptable actions. Once NWDHE has taken corrective action satisfactory to EPA, any suspended payments will be released and scheduled payments continued.

If NWDHE fails to take the necessary corrective action deemed adequate by EPA within twelve months of receipt of the original notice, EPA will withhold payments and reallocate the funds to other states.

If EPA determines that capitalization grant funds were subject to waste, fraud or abuse, the capitalization grant may be recovered under procedures outlined in 40 CFR Part 31.

2. Disputes

The “disputes” provisions of 40 CFR Part 31, Subpart F shall be used for disputes involving EPA disapproval of an application or a capitalization grant, as well as disputes arising under a capitalization grant, including suspension or termination of grant assistance.

E. National Reporting Needs

Annually, NWDHE will provide EPA with a specified set of project-level data in its priority list, IUP, third quarter disbursement schedule, Biennial Report, and other information negotiated between EPA and NWDHE.

F. Records

1. Files

NWDHE will receive and review project documents from assistance applicants. These documents, together with NWDHE’s review memos and the summary checklists, will be filed in official project files maintained by the state. NWDHE will maintain the official financial review files and the loan agreement. The project files will be made available to EPA for review based on reasonable notice by EPA. It is expected that the files would be reviewed on a sample basis in conjunction with on-site visits scheduled as part of the annual review or otherwise to monitor NWDHE’s management of the DWRLF funds.

2. Records Retention

NWDHE will retain project files in accordance with 40 CFR Part 31. NWDHE will arrange for the storage of certain records for a period as long as the repayment period on any DWRLF

assistance, and otherwise in accordance with state law. All records will be retained by NWDHE for the period agreed upon for repayment, plus (3) years following completion of repayment.

3. Access to Records

Access to all DWRLF records in the possession of the state will be in accordance with state laws governing access to information. Access to all records in the possession of the EPA will be in accordance with the US Freedom of Information Act, P.L (93-502).

Information related to the capitalization grant agreement and supporting documents located in the EPA Regional Office is available from EPA in accordance with the US Freedom of Information Act.

4. Information Management System

The information management system for regularly updating data on projects receiving DWRLF assistance and other information on the DWRLF status is new now being developed by EPA in conjunction with the states. NWDHE will agree to enter relevant DWRLF information into the system once it is complete. EPA will have access to information in the system as needed, but will not be able to modify data. EPA will use this information to assess the program on a national basis and to monitor state progress in years in which Biennial Reports are not required to be submitted. The EPA Regional Offices will use the information to assist in conducting annual reviews.

IV. EXECUTION

A. Designated Signatories

1. Authorization

The following officials are authorized to effect program changes (items significantly altering the Operating Agreement):

For NWDHE: Director, NWDHE
For EPA: Regional Administrator

2. Other Changes

Items not altering the OA, but involving changes to implementation or review procedures, may be implemented through the agreement of the same officials:

For NWDHE: Director, NWDHE
For EPA: Regional Administrator

B. Revising the Operating Agreement

1. This OA may be amended at any time by mutual agreement between the authorized signatories in writing. Revisions will be particularly considered following reviews of the Annual Report and/or Audit.
2. All revisions regarding modifications to any attachment or procedures shall be through the designated official indicated above.

C. Authority

The authority of this Operating Agreement is found in legislation establishing the DWRLF (SL98-121).

40 CFR Part E is the federal regulatory authority for the DWSRF program. Should any conflicts result between the federal regulations and the Operating Agreement, the federal regulations will take precedence.

D. Effective Date

The Operating Agreement will be effective commencing on_____

Regional Administrator
Environmental Protection Agency

Executive Director
New Water Department of Health and
Environment
State of New Water

ATTACHMENT A
DWRLF ENABLING LEGISLATION

ATTACHMENT B
MEMORANDA OF UNDERSTANDING

ATTACHMENT C
STATE ENVIRONMENTAL REVIEW PROCEDURES

ATTACHMENT D
STATE REGULATIONS