



Date: October 20, 2020

To: Nebraska Environmental Quality Council

From: Marty Link, Planning and Aid Division Administrator, NDEE

Re: Amendment of the State Fiscal Year 2021 Intended Use Plan

The economic crisis sparked by the COVID pandemic has shown over the past few months the importance of the State Revolving Fund (SRF) programs to stay nimble in order to react and get ahead of the shifting financial market conditions. The Nebraska SRF program has seen a sudden increase of borrowers deciding to pay off their SRF loans and save their community money by refinancing their SRF debt. These communities are finding that other financial lenders are able to provide much better loan terms than their current loans with the SRF program. The NDEE proposes to amend the State Fiscal Year Intended Use Plan (IUP) to save communities money and additional administration expenses as well as prevent further increase in the SRF cash balance. We propose to substitute several pages in the IUP to accomplish these goals, as follows:

- Allow for all Clean Water borrowers to be able to refinance their loans with minimal eligibility requirements. Current language in the IUP only allows communities who have a medium or high AWIN sustainability risk factor. (Refer to page 12 of the IUP)
- Additional wording is proposed to add clarification that interest rates will be monitored and may be adjusted quarterly. (Refer to pages 3, 11, 29, and 33 of the IUP)
- Allow the Clean Water program the flexibility to apply full Green Project Reserve (GPR) benefits to projects. We propose amending the language to allow GPR to be calculated based upon the Department's policy. (Refer to pages 3 and 107 of the IUP)
- Currently, Drinking Water loans may not be restructured so a blended loan program is proposed with this amendment. Should a borrower agree to not refinance an existing loan with another lending institution, then rates down to 0% would be offered on the financing of new projects. There are at least 10 communities that could take advantage of this proposed program, and possibly several more could develop in the next five years as private lending rates are projected to remain at historic low levels. (Refer to pages 32 and 33 of the IUP)
- The Drinking Water program would like to take advantage of the IUP amendment and propose for an additional funding activity for small Nebraska communities. A new satellite technology, synthetic aperture radar, can conduct location specific confirmation of leaks in water distribution systems of small communities, those with populations less than 10,000. Very large water systems have successfully reduced water loss relying on this technology, and through the proposed use of the DWSRF set-asides and this pilot project, the agency will be able to determine how effective this technology will be to reduce water loss in rural areas of the State. (Refer to page 37 IUP)

With the approval of these amendments, the program hopes to be able to relieve some of these communities from economic stress by reducing the cost of their debt and allowing the community to save money.

SECTION I - CLEAN WATER STATE REVOLVING FUND (CWSRF)

INTRODUCTION

The CWSRF was created to provide below market financing for construction of publicly owned wastewater treatment works and nonpoint source control systems. For more information on eligibility, please refer to NDEE's Title 131, *Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs* (year).

Title VI of the federal Clean Water Act (CWA) requires the State to propose an annual plan setting forth the manner in which the State intends to use the money available in the Clean Water State Revolving Fund (CWSRF). This document is the State of Nebraska's State Fiscal Year (SFY) 2021 CWSRF Intended Use Plan (IUP) covering the time period of July 1, 2020 through June 30, 2021. Title VI (CWA) also requires that projects funded by the CWSRF be listed on the Project Priority Planning List. A priority system and the Project Priority Planning List are prepared in accordance with Title II, Section 216 of the federal CWA. The Project Priority Planning List and priority system are included with this IUP for approval action by the Environmental Quality Council (EQC). Potential CWSRF projects are selected from the Project Priority Planning List for funding. This IUP is an integral part of the cycle of events carried out annually in administering the CWSRF program. The IUP serves as a basis for developing new capitalization grant payment schedules with the U.S. Environmental Protection Agency (EPA) Region VII Administrator. In addition, the IUP serves as a basis for assessing the State's performance in administering the CWSRF program. This document can be compared to the CWSRF Annual Report for a complete picture of what was planned versus what was accomplished over the year. Assurances and certifications contained in the Operating Agreement established between the NDEE and the U.S. EPA Region VII are incorporated in this IUP by reference.

HIGHLIGHTS AND WHAT'S NEW FOR SFY 2021:

- The Federal budget was passed as of December 20, 2019. The final allotment for the Federal Fiscal Year (FFY) 2020 CWSRF Capitalization Grant for Nebraska is \$8,110,000. This is approximately \$1,000 more than last year's allocation.
- On July 1, 2019, the Department of Environmental Quality (NDEQ), and the Nebraska Energy Office, were merged into one program called the Department of Environment and Energy (NDEE).
- Construction Loan interest rates for CWSRF will be set similar to last year's rates:
 - For loans with terms of 20 years or less:
 - Annual interest rate is currently set at 1.5%. The annual interest rate may be adjusted quarterly due to market changes.
 - Projects with qualifying Green Project Reserve (GPR) components may receive up to a 0.50% reduction in annual interest.
 - For loans with terms greater than 20 years:
 - Annual interest rate will be determined based upon Assessing Wastewater Infrastructure Needs (AWIN) Risk score and the current market rate.
 - Loans made to municipalities with a medium or high AWIN Risk score, or are considered to be under financial hardship by the Department, will receive an annual interest rate of 1.5%.
 - Loans made to municipalities with a low AWIN Risk score will receive an annual interest rate of 2.00%.
 - Municipalities who do not meet the AWIN eligibility criteria may submit a financial hardship report to the Department for additional consideration.
 - Projects with qualifying GPR components may receive up to a 0.50% reduction in annual interest.

tracking software that was purchased with the administration funds from both CWSRF and DWSRF. Further work on the software is planned for the SFY 2021 and will continued to be paid from these administration funds. The contract was let through EPA.

The CWSRF market loan rate determination procedure is described in the CWSRF program regulations (Title 131 – *Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs*) and is based on the cost of obtaining money for the Fund and on public finance market rates. The CWSRF market rate will be set at 1.5% for construction loans. Loans for emergency projects, as established by Title 131, that serve as bridge financing until funded by other financial sources and planning loans will have a 0% interest rate.

With the approval of LB737 by the Governor on February 24, 2016 during the Nebraska 104th Legislature (2015-2016), the CWSRF is now able to provide financing for loans with a maximum term limit of 30 years. The primary intent of extending term loans from 20 to 30 years is to assist disadvantaged communities that may experience financial hardships in financing their wastewater infrastructure needs. The NDEE has developed the policy found below for establishing various interest rates for loans exceeding 20 years based upon communities' AWIN scores and ranking.

The following is the current market loan rate strategy for the SFY 2021. Rates may change quarterly due to market changes.

- For loans with terms of 20 years or less:
 - The annual interest rate will be 1.5%.
- For loans with terms greater than 20 years:
 - Eligible borrowers with a medium or high AWIN Sustainability Risk score, or are considered to be under financial hardship by the Department, will have an annual interest rate of 1.5%.
 - Eligible borrowers with a low AWIN Sustainability Risk score will have an annual interest rate of 2.0%
 - Municipalities who do not meet the AWIN eligibility criteria may submit a financial hardship report to the Department for additional consideration.
- Projects which incorporate eligible Green Project Reserve (GPR) components may receive a deduction of up to 0.50% annual interest rate depending upon the percentage of project that is GPR eligible.
- Loans made for emergency projects that serve as bridge financing while a borrower awaits to receive funding from other sources, such as FEMA, will have an annual interest rate of 0% for SFY 2021 IUP. The 0% will only apply to the portion that will be covered by other funding sources. Loan contracts will also establish that if other funding sources cannot be secured, the interest may be adjusted up to 1.5%.
- The market rate for Planning Loans will be set at 0% for the SFY 2021 IUP.

As an effort to continue to create jobs and generate new businesses, NDEE may offer incentives for economic development through reduced interest rates, up to a quarter percent. The Director may adjust the market rate of interest in response to changing public finance market conditions. The actual interest rate charged on each loan will be determined under the procedures described in Appendix C.

B. Terms

The term limit of all financial assistance will be established by the NDEE and borrower in accordance with federal and state regulations, up to a maximum of 30 years, and cannot exceed the expected life of the project. Planning Loans will have a term up to a maximum of five years.

Repayment of loans will generally be based on a level payment amortization schedule with full amortization within the allowed maximum term of the initiation of operation. Loan recipients may request stepped payments or terms less than the maximum allowable term limit. Loan recipients may make payments early and in excess of their payment schedule. No prepayment is allowed within the first ten years of the loan if the loan recipient has received Forgiveness and/or a Small Town Grant unless the borrower received additional assistance from another funding source. Principal and interest schedules will be adjusted

accordingly. For any project that receives a term greater than 20 years, no prepayment is allowed within the first five years of project completion.

C. Refinancing

Refinancing allows wastewater treatment works debt, including previous SRF loans, to be refinanced if the debt was incurred after March 7, 1985. Wastewater treatment works debt that was not previously financed by SRF must have followed all of the SRF requirements at the time it was constructed. For example, Davis-Bacon requirements do not apply to refinancing of projects that had completed construction prior to October 30, 2009. ~~Refinancing will be allowed for all communities who have a medium or high AWIN sustainability risk factor. Municipalities who do not meet the AWIN eligibility criteria may submit a financial hardship report to the Department for additional consideration justifying the forgiveness requested.~~ The refinanced interest rate and administration fee will be at the current rates identified in this IUP. Refinanced projects will not be eligible for Loan Forgiveness or Small Town Grants and may only refinance once every 10 years. The term length will not exceed the maximum eligible term from the initiation of operation and there must be at least five years of payment left to refinance a loan.

D. Water Quality Planning

Section 604(b) of the CWA provides for \$100,000 or 1% of the CWSRF allotment, whichever is greater, to be used to carry out water quality management planning under Sections 205(j) and 303(e) of the CWA. Section 604(b) funds are provided through a grant application process separate from the CWSRF capitalization grant process. The CWA Amendments of 1987 amend Section 205(j)(3) and direct the State to consider allocating up to 40% of the allotment to regional public comprehensive planning organizations and appropriate interstate organizations unless the Governor, with approval of the EPA Regional Administrator, agrees that less than 40% should be allocated.

The NDEE has notified appropriate organizations of the pass-through provision. The Department received no applications from appropriate organizations for water quality planning. The 205(j)(1) funds will be used for water quality planning on a statewide basis by the department. The Governor has submitted a proposal to the EPA Region VII Administrator for allocation of these resources.

E. Emergency Loan Assistance

The Department will consider applications for emergency loan assistance in the case of catastrophic failure of existing facilities and Public Water Systems, causing an environmental or public health threat, or for unforeseen threats of contamination to the source water supply in accordance with Title 131. The NDEE may provide funding for emergency projects at any time, subject to availability of funds and aside from the adopted Funding and Planning Lists. Such financing shall not be used for routine maintenance of facilities.

For emergency assistance, eligible recipients will notify the Department and DHHS of the need for emergency assistance. The notification must include the nature of the threat or failure, potential environmental or public health threat of the emergency, and a complete description of the proposed remedial action.

A. Long-Term Goals

1. Manage the DWSRF fund so its revolving nature is assured in perpetuity in order to provide a source of continuing financial assistance to PWSs for future drinking water needs. It is our intent to request EPA capitalization grants and obtain state match in a timely manner, and to allocate match and recycle funds to projects in a timely manner.
2. Survey systems for drinking water infrastructure needs so NDHHS-DPH can maintain a database for making program decisions, and to evaluate user charges on a regular basis.
3. Protect the public health by maximizing funding towards high priority projects.
4. Promote cost-effective water projects which consider several alternatives and include a cost-effectiveness analysis comparing the appropriateness of the alternatives.
5. Coordinate with the U.S. Department of Agriculture-Rural Development and the Nebraska Department of Economic Development-Community Development Block Grant programs to provide affordable financing for public drinking water needs.
6. Balancing the need for fund growth at the rate of inflation experienced in the construction industry versus the desire to provide loans at low interest rates. The fund and loan interest rates and cost of borrowing the state match will be examined ~~quarterly~~ **annually** to evaluate the fund net growth and determine the reasonableness of loan interest rates. Management practices will be reviewed and modified annually to assist in achieving the growth goals.
7. Progress toward incorporating source water protection best management practices into public water supply operations.

B. Short-Term Goals

1. Continue to attract customers to the program with low interest rates.
2. Commit available loan funds to as many of the highest priority projects as possible.
3. Assist systems which need to upgrade or construct new drinking water projects to attain and/or maintain compliance with the provisions of the Nebraska Safe Drinking Water Act and the regulations adopted there under.
4. Assist systems in meeting required drinking water quality standards. This includes giving funding priority to systems with compliance deadlines established by the NDHHS-DPH.
5. Work with systems in need of technical, financial, and managerial assistance.
6. Provide at least 15% of the DWSRF capitalization funds for loans to small systems with populations less than 10,000. It is estimated that over 91% of the loans planned for closure in SFY 2021 will be made with small systems.
7. Revisions of source water delineations and the transition from source water assessments to protection activities will continue, utilizing the source water protection set-aside for granted projects.
8. Continue to develop a marketing program.

Projects that are moving forward but will not be able to close a loan prior to the end of the current SFY will be considered to have obligated funds if the loan applicant has held a public hearing or meeting and/or a Finding of No Significant Impact or Categorical Exclusion has been signed and issued by the NDEE Director. These actions shall be considered to constitute a binding commitment with the community for a DWSRF loan. The binding commitment will expire at the end of SFY 2022. PWSs with binding commitments issued in SFY 2020 will be able to close loans prior to the October 1st bypass dates, under the terms noted in the SFY 2020 IUP (except interest rate) unless the SFY 2021 funding list or bypass criteria provide better financing alternatives before those dates. The PWS may request an extension of one year for the binding commitment if unforeseen circumstances occur and prevent the PWS from closing the loan.

To meet critical public health needs resulting from a natural or manmade disaster which may or may not activate the State Emergency Operations Plan, the Chief Medical Officer of NDHHS-DPH may request the Director of NDEE to bypass the order of priority projects listed in the IUP and to prioritize any remaining available funds for eligible drinking water projects.

Land Acquisition, Source Water Protection Area, and Water Meter Projects listed on the SFY 2021 IUP may also be funded in accordance with IUP CWSRF, Section I, Part VII "Source Water Protection Area and Water Meter Projects". Land Acquisition, Source Water Protection Area, and Water Meter projects may be funded after the CWSRF bypass date, subject to availability of CWSRF funding. In addition, de-chlorination projects listed under the CWSRF ranking list may be funded as DWSRF low-priority projects after the October 1, 2020 bypass date, should funds remain available.

Projects ranked with at least 60 points will be carried forward for up to four years in the IUP if the criteria resulting in the system's priority ranking remains in effect. All remaining Low Priority status projects will be carried forward for up to four years in the IUP if the system has a Preliminary Engineering Report on file with the NDHHS-DPH.

IV. ADDITIONAL INFORMATION AND REQUIREMENTS

A. Administrative Fees

Nebraska will continue to use the DWSRF Administration Cash Fund to cover administrative program costs this fiscal year. To meet the long term administrative needs of the program, an annual fee of up to 1% is charged against the outstanding principal on loans. However, the 1% administration fee charged on all loans may be reduced for past DWSRF loan recipients. Up to a 0.25% reduction in fees on new loans up to the prior borrowed amount, or up to a 0.5% reduction for the communities which have current outstanding loan balances. These fees are not included in the loan principal. Fees collected in addition to principal and interest that are not deposited as loan repayments are considered "income received by the grantee" or "program income."

An annual administrative fee of 0% may be applied to loans made for emergency projects as defined by Title 131, that serve as bridge financing while a borrower awaits to receive funding from other sources, such as FEMA. This 0% fee may also be applied to blended package loans, wherein if a past borrower agrees to amend existing DWSRF loan agreements and the Department's prepayment requirements, a fee reduction of up to 0% may be applied on future loan assistance.

A fee of 0.5% will be assessed on all Planning Loans. For the FFY 2021 Capitalization Grant, it is estimated that administrative fees collected on Capitalization Grant loans that is considered to be program income will amount to approximately \$528,528.

This fee is calculated on a semiannual basis and billed when loan principal and interest payments are due. The fee will be applied to all loans in accordance with Title 131 and the loan agreement. The fee is deposited into an account separate from the DWSRF accounts and is used for administrative costs. It is planned that revenue from fees will be used in part to provide the Capitalization Grant match for the FFY 2019 and 2020

Capitalization Grants. Further, the Administration Cash Fund may be used for loan forgiveness and/or planning/source water protection grant funds.

B. DWSRF Market Loan Rates

The DWSRF market loan rate determination procedure is based on the cost of borrowing money for the DWSRF and on public finance market rates. Rates may change quarterly due to market changes. The DWSRF rate is set to the following for the SFY 2021 IUP:

- For loans with terms of 30 years or less, the market rate will be set at 1.5%.
- For loans with terms exceeding 30 years:
 - For Disadvantaged Communities, the market rate will be set at 1.5%.
 - For all other communities, the market rate will be set at 2.0%.

Loans made for emergency projects that serve as bridge financing while a borrower awaits to receive funding from other sources, such as FEMA, will have an annual interest rate of 0%, and the rate for Planning Loans will be set at 0%. This 0% fee may also be applied to blended package loans, wherein if a past borrower agrees to amend existing DWSRF loan agreements and the Department's prepayment requirements, a fee reduction of up to 0% may be applied on future loan assistance.

The Director may adjust the rate of interest in response to changing public finance market conditions. The actual interest rate charged on each loan will be determined under the procedures described in Appendix C.

C. Terms

Repayment of loans will generally be based on a level payment amortization schedule with full amortization of a typical loan in 20 years. Terms of up to 40 years are allowed for disadvantaged communities, with a maximum of 30 years for all other systems dependent on the design life of the funded project. Planning Loans will have a term of five years. Several opportunities for changing the loan terms are described under provisions in Appendix C. No prepayment is allowed within the first five years of the loan term if the loan recipient has received Forgiveness assistance.

D. Financial Status of DWSRF

Estimate as of March 1, 2020

Since 1997, the EPA has provided the State twenty-three federal capitalization grants totaling \$205,217,931 and an ARRA grant for \$19,500,000. The State, in turn, provided \$41,084,867 from cash, general funds, and bond proceeds to meet the 20% match requirements. The DWSRF has \$90,370,877 in outstanding loans and \$24,794,383 in loan and forgiveness obligations.

Administrative expenses of the DWSRF program are paid out of fees charged on loans. Loan fees are deposited in the DWSRF Administration Cash Fund. The program collected \$841,644 fees in SFY 2019, and incurred \$482,294 in expenses for program administration. The DWSRF Administration Cash Fund balance is \$1,317,704. Administrative Cash Fee collection in SFY 2021 will decrease to \$776,207, and program administration expenses should increase to \$565,000.

Capitalization grants from federal appropriations provided prior to FFY 2018 are entirely expended. The 2%, 10%, and 15% set-asides from future grants will be used as described in Part I of Section II. DWSRF Sources and Uses of Funds. Set-aside balances are shown in the following table.

To qualify for a Planning Grant, a PWS must meet the following criteria:

1. Their project must be listed on the DWSRF IUP Priority Planning List; and
2. The applicant must be a political subdivision with a population of 10,000 or fewer.

The grant will be up to 90 percent of the PER and other eligible costs, and will require 10 percent matching funds from the PWS; however, such grant is not to exceed a maximum of \$20,000 in federal funds.

Regional Planning Grants will be provided where a Regional PWS, either existing or proposed, will have a project that will address present or prevent future violations of health-based drinking water standards and the regional PWS will not be privately owned. The proposed Regional PWS will have their project on the Priority Planning List or will supply water to a PWS that has a Priority Planning List project to qualify for funding. To be eligible for a Regional Planning Grant, the initial scope of a Regional PWS must be to provide a supply of potable water to a minimum of three community PWSs. Regional Planning Grants will be up to 80 percent of the cost of the PER, or other eligible costs, and will require 20 percent matching funds from the PWS; however, such grant is not to exceed a maximum of \$24,000 in federal funds. If applicable, Regional Planning Grants will be ranked based on the ranking of the PWSs that will be supplied water by the regional system.

Lastly, planning grant funds could be offered to communities participating in a pilot regional leak detection program effort, with a \$20,000 maximum grant amount similar to the above.

C. Source Water Protection Grants Program

Source Water Protection Grant activity will be funded with \$150,000. Source Water Protection Grants will be for proactive projects geared toward protecting Nebraska's drinking water supplies and will address drinking water quality, quantity, and/or education.

Eligible applicants are political subdivisions with a population of 10,000 or fewer, which operate a PWS. The Request for Proposal (RFP) for these grants is issued in the spring of each year. Previous grantees and other eligible applicants are sent notices and the RFP can be viewed online at <http://DEE.ne.gov>.

Eligible projects will provide long-term benefits to drinking water quality or quantity, or the education of the public using the water system. Grants cannot be used to purchase land or for the sole purpose of developing a Source Water or Wellhead Protection Plan.

D. Workforce Development Study

An aging workforce in utility operations is a challenge that all public water systems face in the State of Nebraska. Attracting workers to small communities continues to be a challenge with the movement of jobs and populations to urban centers. Funding will be provided from the program's administration cash fund to assist community water systems in recruiting operators to be trained by existing staff to operate their drinking water system. Prioritization will be given to systems serving populations less than 5,000, and those in areas where a military veteran or their spouse has expressed interest in working, and who has completed the necessary free course(s) towards certification. Other applicants will also be considered to help fulfill a community's needs, and a pool of potential applicants will be retained to assist communities in finding certified operators. The State Drinking Water Division will work as a liaison between newly certified operators and communities in need. It is anticipated that this will be a three to four year project, followed by a report prepared by the State Drinking Water Division which outlines the effectiveness of this workforce initiative.

APPENDIX C

CWSRF & DWSRF INTEREST RATE AND ADMINISTRATIVE FEES SYSTEM

The Interest Rate System is developed in accordance with "Title 131 Rules and Regulations for the Wastewater Treatment Facilities and Drinking Water Construction Assistance Programs." This system is reviewed and approved by the Environmental Quality Council (EQC) as a part of the public participation process followed each year for the Intended Use Plan.

On loans made from the proceeds of leveraged bonds, the Department will set interest rates reflective of the rates charged on the leveraged bonds. The Department of Environment and Energy will set the SRF market rates, using the cost of borrowing money for the CWSRF and DWSRF, recent local tax-exempt municipal issues, and costs for private borrowers as guidance.

CWSRF Interest Rate for Loans

The following interest rates will be set for CWSRF loans:

- For loans with terms of 20 years or less, the market rate will be set at 1.5%;
- For loans exceeding 20 years:
 - For borrowers with a medium or high AWIN risk score, or are considered to be under financial hardship by the Department, the market rate will be set at 1.5%;
 - For borrowers with a low AWIN risk score, the market rate will be set at 2.0%*.
 - Eligible borrowers who do not meet the AWIN eligibility criteria may submit a financial hardship report to the Department for additional consideration.
- The market rate for Planning Loans will be set at 0%;
- Project which incorporate eligible Green Project Reserve (GPR) components may receive a deduction of up to 0.50% annual interest rate depending upon the percentage of project that is GPR eligible.
 - The market rate for a CWSRF project with qualifying GPR components will be initial market rate with a possible maximum reduction of 0.50% based upon the percentage of total SRF fundable GPR eligible components against entire SRF fundable amount. Projects that are 100% GPR eligible will receive a total reduction of market rate of 0.50%. If a CWSRF funded project has a combination of GPR eligible items and ineligible items, a blended rate will be calculated based upon the percentage of each portion may be calculated and applied based upon the Department's policy.

DWSRF Interest Rate

The DWSRF market rates will be set at:

- For loans with terms of 20 years or less, the market rate will be set at 1.5%;
- For loans with terms exceeding 20 years:
 - For Disadvantaged Communities, the market rate will be set at 1.5%;
 - For all other communities, the market rate will be set at 2.0%;
- For Planning Loan, the market rate will be set at 0%.

For the purpose of this appendix, DW disadvantaged communities are communities which have a Median Household Income (MHI) less than or equal to 120% of the State MHI.

Private borrowers (except for not-for-profit community systems) will not qualify for any alternate rates or any rates available to communities as a result of a disadvantaged community determination. There are no discounts available for accelerated pay back or debt service based rates and no provisions for extended terms.