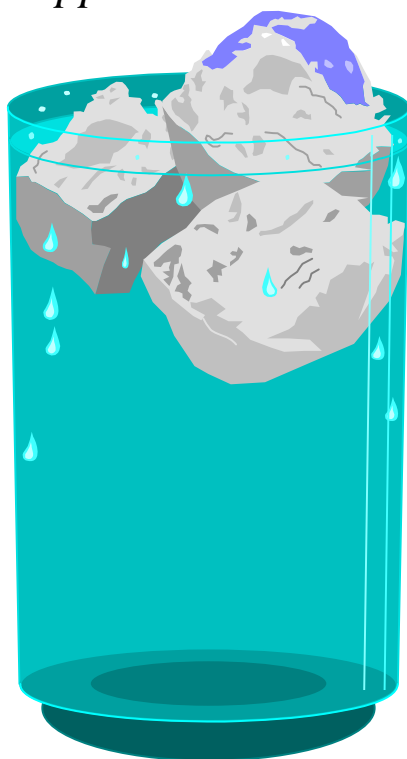


Securing Financial Assistance Through the Drinking Water Revolving Fund

*A Guidance Document for
Water Suppliers and Consultants*



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INTRODUCTION

The Michigan Department of Environmental Quality (DEQ) has designed this guide to assist potential Drinking Water Revolving Fund (DWRF) applicants and their consultants. There are three main purposes of this guide:

- *To help water suppliers and their consultants understand DWRF planning requirements*
- *To help potential applicants understand the steps necessary to receive DWRF loan assistance*
- *To explain the financial transactions which are necessary to close a loan and receive loan payments*

This guide can serve as a valuable resource to help qualified water suppliers secure financial assistance through the DWRF, but it cannot replace a close working relationship with DEQ staff. It will, however, lead you through the program and identify the sequence of events that must take place. A staff person from the Revolving Loan Section of the DEQ's Resource Management Division will be assigned as your project manager. Your DEQ project manager will assist you in taking the steps necessary for inclusion on the next Project Priority List (PPL).

Table of Contents

What is the Drinking Water Revolving Fund?	1
Who Benefits from the DWRF?	1
Developing A Project Plan	2
The Project Priority List	7
Project Eligibility	8
Application Submittal and Review	15
The Order of Approval	17
The Loan Closing	18
Constructing the Project	20
Submitting and Receiving Loan Disbursements	21
Administrative Completion and Loan Repayments	22
How to Contact Us	23
Other Available Resources	24

WHAT IS THE DRINKING WATER REVOLVING FUND?

The DWRF program is designed to assist Michigan water suppliers in satisfying the requirements of the Safe Drinking Water Act (SDWA). On August 2, 1996, Congress reauthorized the federal SDWA and included provisions to establish the DWRF program for states. On June 17, 1997, Governor John Engler signed legislation establishing the Michigan DWRF (Part 54 of PA 451, 1994). The DWRF program helps to protect Michigan's drinking water resources by offering low interest loans to eligible water suppliers. DWRF loan moneys have been used to upgrade existing water distribution systems to meet drinking water standards, enhance source supplies, provide storage to satisfy peak demand needs, replace old or inadequate systems, construct regional distribution systems, and provide safe drinking water to communities previously served by individual wells.

The DWRF is a public health and an environmental protection program that provides low interest financing to assist qualifying water suppliers that have documented their needs. The revolving nature of the fund will enable Michigan to finance drinking water projects for years to come. The DEQ and the Michigan Finance Authority (MFA) jointly administer the DWRF. Each agency lends its particular expertise for efficient operation of the program.

Each fiscal year, Congress authorizes an amount to be appropriated for the DWRF, which is then allocated among the states. To receive its share of federal funds, Michigan must contribute one dollar in matching funds for each five dollars given by the federal government.

WHO BENEFITS FROM THE DWRF?

In a sense, we all benefit. Completed DWRF projects have helped ensure Michigan residents have an adequate supply of safe drinking water while ensuring reliability for emergency situations of high water demand. The DWRF program has helped to ensure that drinking water standards are met. Large metropolitan areas as well as many smaller water suppliers have already solved their water supply, storage, or distribution problems by financing projects through the DWRF.

Several communities have drilled new wells, added or replaced storage tanks, established new connections to existing sources of drinking water, or added treatment facilities. DWRF money can be used to create a new community water system when necessary to: a) address an actual public health problem with serious risks; b) be limited in scope to the specific geographic area affected by contamination; and/or c) be sized to accommodate only a reasonable amount of growth over the life of the facility. The new water system must be in compliance with requirements of the federal Safe Drinking Water Act (SDWA).

The citizens who reside in communities that have constructed drinking water projects financed by the DWRF obviously receive the most direct benefit from those projects. However, having safe and reliable drinking water results in a healthier environment for all of us. Groundwater protection helps foster a healthy population, leading to prosperity and service reliability for

generations to come. The DWRF program has helped, and will continue to help, make this possible.

Public or private water suppliers (community water systems and non-community water systems that operate as non-profit entities) are eligible to borrow from the DWRF. All DWRF projects are designed to serve residential, commercial, or industrial customers provided the projects are not determined to be primarily for growth or fire protection. Examples include water main replacement, looping to eliminate dead-ends in a distribution system, replacement of inadequate storage facilities, construction of new storage facilities, well field improvements, extensions for consolidation with other existing systems, and upgrades to water treatment facilities. If you think you may have a qualifying project, the first step is to contact DWRF program staff in the Revolving Loan Section and consider preparing a project plan.

DEVELOPING A PROJECT PLAN

You must submit a project plan to the DEQ to be considered for funding in the DWRF program. The information provided in the project plan must document the need for your project and evaluate potential alternatives for correcting the drinking water problems in your community. You must submit the plan in its final form by no later than May 1 of any year to be considered for funding in the next fiscal year, beginning October 1. A draft plan should be submitted for DEQ review at least two to three months prior to the May 1 deadline. This will allow the DEQ time to comment on your draft so that the final project plan covers all the necessary federal and state requirements.

There are seven distinct elements that must be included in a project plan:

1. Project Background
2. Need for the Project
3. Analysis of Alternatives
4. The Selected Alternative
5. Evaluation of Environmental Impacts
6. Mitigation of Environmental Impacts
7. Public Participation

You must address each of these topics in your planning efforts. Your DEQ project manager and Water Resources Division district engineer will review the project plan to ensure that a cost-effective, eligible alternative has been selected that meets state and federal requirements. If so, your project manager will propose that your project be ranked for funding on the state's Project Priority List (PPL). If significant deficiencies exist in the plan, you will have to correct them before the project can be ranked on the PPL. The following discussion will help to clarify the information necessary to complete each section of the plan.

1. Project Background

This part of the project plan serves as the foundation from which the water supplier and the DEQ assess needs, evaluate alternatives and identify key environmental issues. (The

project plan must explain the needs for the entire system over a 20-year planning period.)
The project background includes the following items:

- A delineation of the study area and identification of its characteristics (for example, land use, surface waters, location of key landscape features, etc.)
- A discussion of present and future economic growth in the service area
- A description of the existing water system and deficiencies if applicable
- Population to be served by the project (including 10 and 20-year projections)
- Environmental conditions in the area (both natural and cultural)

2. Need for the Project

In this section of the plan, you will describe the drinking water problem(s) that your water supplier is experiencing. This will provide the supporting documentation necessary to justify your conclusion that the problems need to be corrected. The project plan shall include documentation that demonstrates that the project is needed to assure maintenance of, or progress toward, compliance with the Michigan SDWA (1976 Public Act 399). Discussion should include the status of compliance with environmental regulations, the existence of legal orders (if any), the water quality data that demonstrate impairment or a health concern, and the source, distribution, and storage capacity needs of the study area for 20 years. If your water supply has deficiencies or inadequacies and/or is proposing an extension of its distribution system, you must document drinking water problems by using resources such as local health department records, well water testing analyses, DEQ district staff recommendations, etc. You must provide schematic drawings identifying system deficiencies and limiting site characteristics on a map that also shows existing habitation.

3. Analysis of Alternatives

Your project plan must include a thorough analysis of the principal alternatives considered for correcting your community's drinking water problem. You must do a systematic evaluation of all potential alternatives to justify the decision to proceed with the selected alternative, and you must review the reasons why all other alternatives were dropped from consideration. In addition to considering conventional distribution, source and storage needs, each DWRP applicant must evaluate the "no action" alternative, regional alternatives, and optimal performance of existing facilities. You must evaluate and document alternate routings of distribution systems, storage facilities, etc., and alternate sites for major facilities, to avoid impacting sensitive environments.

Your analysis and selection of principal alternatives should be based on:

- The goals of the project(s)
- Drinking water needs (20-year design life or planning horizon)
- Technical issues, feasibility and constraints
- A 20-year net present worth cost-effectiveness analysis (including capital costs, operation, maintenance, and replacement costs, and salvage value)

- Potential environmental impacts
- Social acceptance
- Revenue system rate structures and ordinances
- Inter-agency coordination and/or agreements between all municipalities, or entities involved with the proposed project

4. The Selected Alternative

Your project plan must explain the selected alternative in detail. It must include information on the technical, administrative, financial, environmental, and social aspects of the project. Creative use of maps, tables, graphs, schematic drawings, overlays, etc., will assist citizens' understanding of how the proposed facility will improve the water system. The following items need to be included in this section of the plan:

- Description of the selected alternative
- Cost estimates
- Basis of design
- Authority to implement the alternative
- Input from the local Regional Planning Agency (208 agency)
- Proposed user charges (including operation, maintenance, and replacement, debt service, and any other costs that will be incurred to construct and operate the selected alternative and an explanation of the financing mechanism(s)) that will be used to support the DWRP loan
- A proposed project schedule
- Environmental impacts and mitigative measures (see discussion below)

5. Evaluation of Environmental Impacts

You must describe the direct, indirect, and cumulative environmental impacts of the selected alternative in detail. Direct impacts are caused by the construction and operation of the project. Indirect impacts are secondarily linked to, or induced by, the completion and use of the constructed facilities. Cumulative impacts are those which increase over time or result from individually minor, but collectively significant, actions taking place over time. All impacts (direct, indirect, and cumulative) need to be assessed for beneficial and adverse effects, short and long-term effects, and ability to reverse the impact (whether it is irretrievable or irreversible).

A. Direct Impacts

Direct impacts to be considered include:

- Effects on historical/archeological/cultural resources
- Effects on existing water quality (surface and groundwater)
- Effects on air quality
- Socioeconomic changes

- Effects on natural habitat (includes wetlands and sensitive ecosystems) or endangered species
- Aesthetic concerns
- Fostering of community growth

B. Indirect Impacts

Indirect impacts that should be considered are:

- Development (new construction) changes in the study area
- Land use changes
- Changes in air or water quality due to development
- Changes to natural habitats, sensitive ecosystems, wildlife, and/or endangered species due to secondary development
- Impacts on cultural/historical or socioeconomic resources
- Aesthetic concerns
- Resource consumption over the project's useful life

C. Cumulative Impacts

Examples of cumulative impacts that bear consideration are:

- Increased population growth
- Development impacts from new distribution systems, storage or treatment facilities

6. Mitigation of Environmental Impacts

Your project plan must detail the structural and non-structural measures which will be undertaken to ensure that the environmental impacts from implementation of the selected alternative are not, or will not be, significantly adverse. Structural mitigation measures relate to the design and construction of a facility or transmission lines that may be part of the project. Non-structural measures relate to institutional, governmental or private plans, policies or regulations, or the phasing of the facility construction over the planning period. For example, structural mitigation could involve erecting silt fences or installing riprap to avoid erosion into a stream. Non-structural measures could involve enacting a local ordinance to protect environmentally sensitive features in the study area.

7. Public Participation

Public participation during project plan development is vital to the successful completion of a public works project. The law requires opportunities for public input and documentation of that input in the plan. Informal methods of public involvement may include newspaper articles, notices in billing statements, and mass mailings to affected citizens. The law also requires other methods of participation during the final project planning stages. **A formal public hearing must take place prior to plan adoption.**

Many communities also hold one or more public meetings during planning to solicit input and inform the citizenry and inter-agency groups of progress to date.

A. The Public Meeting

Your community is encouraged to conduct a public meeting before selecting the final alternative. Adequate notice of the meeting should be published in a local newspaper. Appropriate state and local agencies should also receive notification. Attendance should be encouraged by holding the meeting at a convenient time and place.

B. The Public Hearing

A public hearing must be held before adopting the proposed project plan. Publication of the hearing notice must appear in local media of general circulation at least 30 days prior to the hearing (at least 45 days for controversial or complex projects). Consider running the notice more than once or using additional means of communication to increase attendance. Try scheduling it during a time most convenient for the citizens, such as evenings or weekends.

C. Content of Public Notice

When published, the notice should contain:

- A description of the drinking water problem(s)
- A description of the alternatives considered
- Cost of the proposed project(s)
- Estimated user charges and method of assessing charges
- Where the project plan can be viewed by the public
- Time and place of meeting

Note: The project plan should be ready and available to the public for the duration of the entire public notice period (minimum 30 days). Copies of the public notice should be sent to all agencies involved with the project.

D. Public Participation Components in the Project Plan

Once the public hearing record is closed, the project plan should be bound with the following information:

- **An official public hearing transcript (as recorded by a steno-grapher, court reporter, or transcribed from an audio recording), or an audio tape of the entire hearing which can serve as the transcript.**
- A copy of the public notice and an affidavit of publication
- A legible list of hearing attendees and their addresses
- A list of local and state agencies who received notice of the meeting

- A copy of written comments received during the public notice period
- A copy of the water supplier's responses to testimony and comments
- A copy of the municipal water supplier's resolution to adopt the plan and its selected alternative, or a private supplier's statement of intent to implement the project plan, whichever is applicable

NOTE: *Your DEQ project manager will provide you with the DWRP Project Plan Preparation Guidance once you have decided to proceed with a project plan. It will cover each of the above items in greater detail than can be presented here.*

THE PROJECT PRIORITY LIST

To be eligible for DWRP loan assistance, a project must appear on Michigan's Project Priority List (PPL). The PPL is a list of drinking water projects ranked in descending order of total points assigned by the state's project priority system set forth in Part 54 law. DEQ staff evaluate whether a plan is sufficiently complete to be included on the PPL that will take effect at the start of the next fiscal year. DEQ staff rank projects under Part 54, section 5405, for each upcoming fiscal year based on the information provided in project plans.

Project ranking is based on the following criteria established by the DEQ to assess the relative severity of problems being addressed by each drinking water project:

1. A maximum of 450 points may be awarded to a project that addresses drinking water quality as outlined in Act 399;
2. A maximum of 350 points may be awarded to a project that addresses infrastructure improvements/upgrades;
3. A maximum of 50 points may be awarded to a project based on the population served by the system;
4. 50 points shall be awarded to a project that benefits a disadvantaged community;
5. Up to 100 points shall be awarded to a project that results in the consolidation of one or more public water system(s);
6. 100 points shall be awarded for a water supply with a DEQ-approved wellhead protection plan or a source water protection plan;

Each fiscal year, the DEQ prepares a draft of the PPL and a draft Intended Use Plan (IUP), which establishes how the DWRP will be administered for the fiscal year. A public hearing notice is published in the DEQ calendar and selected newspapers throughout the state to invite public input. In the late summer, the DEQ conducts a public hearing on the draft PPL and IUP. Hearing comments are received and recorded and, when appropriate, changes are made. On or about October 1, the DEQ completes the final PPL and IUP. Upon notification of the federal appropriation, the DEQ sends a letter to affected water suppliers and their representatives for the

purpose of announcing the proposed “fundable range,” establishing requirements for assistance, setting quarterly milestone schedule deadlines, and confirming the loan interest rate.

Projects listed in the “fundable range” are those which could be funded with available DWRF moneys during the fiscal year. Projects not in the fundable range are given contingency status. Actual funding of projects depends on a number of factors, including a water supplier’s willingness and ability to proceed with the application process for its project in a timely manner. A water supplier that cannot proceed with its project, does not wish to do so, and/or fails to meet program requirements (including adherence to a milestone schedule), will be subject to bypass. Moneys previously targeted for a project that is bypassed will be released to lower priority projects according to rank order on the PPL. Many contingency projects ultimately get funded in this way.

Please note that particularly large, expensive and/or complex projects may be divided into segments to facilitate efficient project management and/or allow a more balanced allocation of loan funds. Part 54 DWRF law allows the DEQ to limit monetary assistance to a maximum of 30 percent of available fiscal year funds to any one project each year.

PROJECT ELIGIBILITY

The DWRF program may provide 100 percent of the financing needed for a project’s eligible costs. Eligibility criteria are summarized below. New eligibility issues may arise occasionally. You can obtain additional information about specific eligibility items from your DEQ project manager.

1. General Eligibility Criteria

To receive DWRF assistance, you must demonstrate (1) that the project is needed to assure maintenance of, or progress towards, compliance with the federal Safe Drinking Water Act (Section 5405(3)); (2) that the project is not planned primarily to foster growth or development (residential, commercial, or industrial); (3) that the project is not planned primarily for fire protection; and (4) that feasible alternatives to the project were evaluated, taking into consideration the demographic, topographic, hydrologic, and institutional characteristics of the area. A water supplier is required to submit a project plan that examines 20-year projected water supply needs for the system’s service area. The selected alternative proposed for construction must (1) be cost-effective and implementable; (2) be included in a project plan that meets the requirements of Section 5405, Part 54 of 1994 PA 451, the Natural Resources and Environmental Protection Act, and its rules and procedures; and (3) show satisfactory compliance with capacity development requirements (Section 5404(9)).

Terms:

“Primarily to foster growth or development” means that the waterworks system and component parts as planned have as a primary purpose the construction or expansion of a waterworks system to accommodate future development. The project

will not be considered primarily for growth or future development if it follows the recommendations of a previously prepared Reliability Study/Master Plan or Engineer's Report to supply existing needs within the boundaries of a water supply's existing service area. However, water main extensions into an undeveloped area, regardless of the existence of a Reliability Study/Master plan, will be considered primarily to accommodate future development and are not eligible for funding under the DWRP program (unless it is necessary to traverse an undeveloped area to benefit existing customers, or to resolve water supply problems by replacing or consolidating existing on-site water supplies).

“Primarily for fire prevention” means project expenses relating to fire protection when that is the primary reason for the project. Examples: 1) Eligible DWRP expense - Source or storage capacity upgrades to resolve specific water system deficiencies, or when source or storage capacity increases are necessary to meet other water system peak demands, and are designed to meet current fire flow standards; 2) Not an eligible expense - Replacement or installation of fire hydrants and associated appurtenances capable of supplying water to a fire engine pumper when this work is apart from transmission or distribution water main replacement projects.

“Capacity development requirements” are a demonstration that the applicant has the technical, financial, and managerial capability to comply with the state and federal Safe Drinking Water Acts, both now and into the future.

2. Specific Eligibility Criteria

- A. DWRP Ineligible Items - The following items are ineligible for inclusion in a DWRP loan:

Fire Protection

Costs associated with projects deemed “primarily for fire protection” will not be eligible for DWRP assistance.

Litigation

Costs associated with project-related personal injury or property damage claims, either as defendant or plaintiff, are not eligible.

Operation, Maintenance, and Replacement Costs

Work considered to be part of normal operation, maintenance, and replacement of a waterworks system, such as routine transmission main flushing, is not eligible. Rehabilitation of transmission lines for structural integrity alone may not be eligible unless the water supplier demonstrates in the project plan that the existing condition of the water distribution system has deteriorated to a point where major rehabilitation and/or replacement of the system is necessary. Expendable supplies

associated with operation and maintenance are not eligible. Maintenance contracts, service contracts, and extended warranties are also not eligible, nor are salaries, fringe benefits, or travel expenses of elected officials.

Vehicles

This provision specifically excludes general-purpose vehicles such as pickup trucks, cars, etc. to transport personnel.

Waterworks System Expansion

DWRF assistance is not available for water system projects or component parts when the purpose of the project is primarily to accommodate growth or development. Costs for extending transmission mains into undeveloped areas solely to create developable tracts is not eligible. Likewise, over-sized mains or waterworks facilities to accommodate future development or growth beyond 20-year needs are also ineligible.

B. DWRF Eligible Items

Bid Advertisement Costs

The cost of bid advertisements in newspapers or trade journals is eligible.

Bond Counsel Fees and Bond Insurance

The expenses of hiring bond counsel to issue a qualified opinion, and the costs of a financial advisor's assistance in structuring the loan or preparing a revenue system, are eligible. Administrative costs incurred by a larger unit of government (i.e., county) serving as the applicant for a smaller municipality that is unable to acquire the necessary investment grade rating for its bonds, are eligible for DWRF assistance if such costs are adequately documented in the application.

Construction Costs

Note: Eligibility of construction contracts is limited to the amount of the low responsive, responsible bidder.

Construction of Test Wells

Although the costs of constructing test wells that become tangible property are not eligible for DWRF assistance as a planning cost, they are DWRF eligible expenses. Other test well costs including performing the pump test, conducting an aquifer analysis, delineating the capture zone, and analyzing water samples for all required parameters are also eligible. Check with your DEQ Project Manager for specific details.

Delay Costs

To the extent that they satisfy other eligibility criteria, costs associated with delays in project completion, regardless of the cause, may be eligible for DWRP assistance using available project funds within the loan amount specified as “contingencies” in the Order of Approval.

Demolition and Restoration

Demolition and/or decommissioning of an existing waterworks system or component is eligible if necessary to accomplish eligible construction, and if the decommissioned facilities were operating at the time the final project plan was submitted. Restoration of work sites disrupted by project construction is eligible provided the restoration is strictly limited to those areas directly affected, and is necessary to restore the disrupted area to a pre-construction condition. (Example: If a gravel roadway is disrupted to install project-related water main, the roadway may be restored to its original pre-construction condition. If paving the roadway is included as part of the project, this portion of the work is ineligible and is determined by the DEQ project manager through the use of the Alternative Justifiable Expenditure process.)

Furnishings

Furnishings for the waterworks facility are eligible if documented in the project plan. Examples of eligible items include desks, tables, chairs, storage cabinets, refrigerators, microwaves, stoves, floor treatments, window treatments, computer hardware and software needed to control the waterworks system, etc. Contact your DEQ Project Manager for more information.

Legal Fees

Standard legal services necessary to implement the project, such as preparation and review of contracts, resolution of bid protests, enforcement of contracts, and litigation associated with eligible land acquisition, are eligible.

Mitigation of Adverse Environmental Impacts

Mitigation of adverse construction or operational impacts is eligible if included in the project plan and Finding of No Significant Impact, and required by the DEQ.

Operation and Maintenance (O&M) Manuals

O&M Manuals are DWRP eligible.

Planning and Associated Costs

To be eligible, project planning costs must be directly related to the proposed waterworks project and must have been incurred after June 17, 1997. Eligible project planning costs include:

- Archaeological surveys
- Environmental audits of project sites (Phase I - baseline assessments)
- Hydrogeological studies
- Project plan preparation
- Public participation activities
- Public hearing transcripts
- Reliability studies

For a water system project or supplier serving more than 10,000 people, or for a water supplier that is not a municipality, incurred planning costs can be drawn after the loan is closed.

For a water system project or supplier serving less than 10,000 people, incurred planning costs may become eligible for early reimbursement upon submittal of a project plan. Such reimbursement would be a short-term planning loan, which would be rolled into the eventual DWRF loan amount at closing. Talk to your Project Manager for more information about early reimbursement.

Professional Services

The costs of engineering, legal, and financial services related to planning, designing and building the project may be eligible for DWRF assistance. Examples of eligible expenses include design and construction engineering, bonding and financing opinions, financial and accounting advice, preparation of bidding documents, costs for acquisition of land and/or structural components integral to the project, and reasonable expenses for administration and supervision of project activities. Eligible engineering services may also include facility start-up assistance during the first year of operation.

Project Administration (Force Account)

Force Account costs incurred by a water supplier to administer a DWRF project are eligible for DWRF assistance if they are adequately documented during the application process. These may include costs such as time spent by an employee overseeing the project, as well as expenses for construction conferences, preparation of reimbursement requests, etc. Employees must be competent and qualified to perform these administrative functions. Administrative costs incurred by a larger unit of government (i.e., county) serving as the applicant for a smaller municipality are eligible for DWRF assistance if such costs are adequately documented in the application. Project planning activities and salaries, fringe

benefits, or travel expenses of elected officials are excluded. See your DEQ Project Manager for additional guidelines.

Residuals Handling Equipment

The cost of facilities or equipment designed to handle drinking water treatment residuals is eligible for DWRF assistance.

Special Purpose Vehicles

Special purpose vehicles required to maintain the project to federal and/or state standards are eligible. This provision specifically excludes general-purpose vehicles such as pickup trucks, cars, etc. to transport personnel.

C. Items That May Be Eligible If Special Conditions Are Met

Bid Allowances

Some types of bid allowances may be eligible if properly documented. Consult with your DEQ project manager for further guidance.

Computer Hardware and Software

These items are eligible only if necessary as a direct interface or process control component of a waterworks system. For all other uses, this equipment is ineligible.

Construction Site Restoration

Restoration of work sites disrupted by construction is eligible only within the limits of the construction zone and only when restored to a quality equal to, but not exceeding, the present conditions.

Contaminated Site Accommodation

DWRF assistance may be provided for cleanup activities necessary in areas directly affected by project construction, except in cases where a responsible party can be positively identified. Site remediation in excess of that necessary to construct the project is not an eligible cost under the DWRF program. Consult your DEQ project manager for further guidance.

Force Account Construction

Force account labor may be approved by the DEQ for DWRF assistance if municipal employees can effectively perform the construction, it is cost-effective, and the total cost of the force account work is less than \$50,000.

Land Acquisition/Easements/Relocation Costs, Etc.

The purchase cost of land is eligible on the condition that:

- *The purchase of land or easement is necessary for siting the eligible waterworks system; and*
- *The purchase is from a willing seller at fair market value; and*
- *The parcel is not larger than what is needed to construct the project; and*
- *The land or easement must be purchased after the water supplier adopted the project plan demonstrating the need for its acquisition.*

Other land-related costs may be eligible, e.g., costs of surveys, appraisals, title searches, litigation, or relocation of displaced persons. Under no circumstances will the DWRP provide assistance to cover the cost of land acquired through condemnation or eminent domain. Federal regulations must be followed during the acquisition process. Consult your DEQ project manager for further details.

Minor Repair versus Major Renovation

Costs for the periodic replacement of water mains or distribution systems may be eligible for DWRP assistance. A substantial increase in breaks may be an indication that sections of the distribution system have reached the limits of their useful life. The water supplier must demonstrate in the project plan that the existing condition of the water distribution system has deteriorated to a point where major rehabilitation and/or replacement of the system is necessary.

Project Refinancing

Project refinancing assistance may be provided to buy or refinance the debt obligations of eligible water suppliers if construction activities commenced and the debt obligation was incurred after June 17, 1997. (This is the date the DWRP law was enacted and the DWRP program came into existence.) Confer with your bond attorney to determine the specific legal details of your proposed refinancing.

NOTE: If refinancing assistance is sought from the DWRP, construction debt cannot be incurred before the Project Plan is approved by the DEQ.

Purchase of Public Water Supply Capacity

In some cases, costs incurred to purchase public water supply capacity from another supplier is eligible if it is determined to be the most cost-effective alternative for meeting the needs identified in the project plan. The contractual basis for a capacity buy-in must be demonstrated to the DEQ's satisfaction.

Water Services and Meters

Only the portions of water services (house leads) within the public right-of-way are eligible (the connecting transmission line must be eligible as well). Water meters installed for new service will be eligible if the water supplier owns them.

D. Eligibility of Multi-Purpose Projects

Some projects may have overlapping eligible and ineligible components with joint cost items that serve both eligible and ineligible functions. A good example is a water main replacement project with street resurfacing that improves the street above and beyond pre-construction conditions. These types of projects are subject to an Alternative Justifiable Expenditure (AJE) analysis to identify the total amount of eligible cost attributable to the water supply component of the multi-purpose project.

Typically, the design engineer prepares the AJE during design of plans and specifications. It is then reviewed by the DEQ for approval. An AJE guidance document is available from the DEQ upon request.

3. When Is Eligibility Determined?

Your DEQ project manager can assist you with a preliminary eligibility determination during project planning to enable accurate project cost disclosure. A second eligibility review is made when bidding documents are submitted to the DEQ. Information included with your DWRf application forms is also reviewed for eligibility. After the DWRf loan is approved, eligibility reviews of construction change orders and final costs are made before the project is administratively completed.

Any questions concerning DWRf eligibility should be directed to your DEQ project manager. If a project manager has not been designated to work with you, please call the Revolving Loan Section at 517-373-2161.

APPLICATION SUBMITTAL AND REVIEW

After a complete project plan has been submitted to the DEQ and your project has been included on the PPL, you will need to submit an application in accordance with a milestone schedule negotiated with your DEQ project manager.

1. Investment Grade Credit Rating

The Michigan Finance Authority (MFA) requires that each DWRf loan be rated, at a minimum, as an investment grade issue. If the water supplier's credit rating is below investment grade, or is not rated at all, additional steps will be necessary to prepare the application. These additional steps may include:

- obtaining a favorable rating, if one does not already exist
- purchasing credit enhancements to guard against disruption of repayments

- financing through another governmental entity, such as a county, to gain the strength of its rating
- state revenue sharing or general obligation pledge
- debt service reserve
- **Early involvement of your bond counsel in planning the project could help avoid critical delays later in the process and/or prevent failure to obtain a loan.**

2. DWRF Application Form

The DWRF Application for Financial Assistance consists of three parts. Part I provides detailed information regarding the financial capability of the applicant as well as a list of the various advisors who will assist the applicant. The MFA is responsible for reviewing and evaluating Part I of your application. You may be asked to provide additional information to support your application. The MFA notifies the DEQ when Part I is approved.

Part II addresses DWRF program requirements, including the covenants, assurances, and certifications that the applicant must attest to in order to comply with federal and state statutes and regulations. Part III requires the applicant to provide bid information and an estimated loan disbursement schedule. Both Part II and Part III contain project cost information and supporting documentation. Your DEQ project manager will review Parts II and III of the application. You will need to correct any deficiencies or omissions as quickly as possible.

Your project manager will provide you with a blank application form after a milestone schedule has been signed. Be sure to read the application instructions carefully before filling it out. Contact your DEQ project manager if you have questions about Parts II and III. Call the MFA with Part I questions.

3. Review and Approval of Plans and Specifications

A water supplier applying for DWRF loan assistance is required to prepare and submit “a set of plans and specifications suitable for bidding.” The bidding documents must be consistent with the contents of the state-approved project plan and meet all of the applicable federal and state requirements. Bidding documents must be prepared by a professional engineer registered in Michigan. The design engineer may either be a qualified employee of a water supplier that is applying for DWRF loan assistance, or a consulting engineer hired by the water supplier on a contractual basis. The design engineer must follow DWRF program requirements and the design standards guidance, which is published by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers.

Generally, two sets of draft bidding documents should be mailed to the DEQ project manager for review. You will need to revise the draft documents to address all the DEQ comments. You will then submit three sets of final bidding documents to your project manager, in accordance with the milestone schedule.

A construction permit issued by the DEQ pursuant to Act 399, P.A. 1976, as amended, is required for DWRP projects. After all technical deficiencies found in the plans and specifications have been rectified, the DEQ District Office will issue the construction permit and you will receive a stamped, approved set of plans along with an approval letter.

4. Addenda to the Approved Bidding Documents

After the issuance of the construction permit and publication of the bid advertisement, you may discover that modifications of the approved final bidding documents are necessary. In such cases, your design engineer will prepare an addendum to the approved final bidding documents for issuance to all prospective bidders.

You must submit three sets of each addendum to your DEQ project manager for review and approval. When the addendum is approved, a stamped copy will be returned to you. If the addendum cannot be approved, either a revised addendum or a change order will need to be issued to correct the problem.

5. The Revenue System

Sound financial management is important to the success of any drinking water project. The water supplier must show that it will collect sufficient revenue to operate and maintain the system, as well as retire the debt. A water supplier applying for assistance must:

- Demonstrate that it has the legal, institutional, and managerial capability to guarantee adequate construction, operation, and maintenance of the system
- Demonstrate financial capability by adopting a user-based revenue system sufficient to fund the operation, maintenance, and replacement costs of the system
- If applicable, execute intermunicipal service agreements or supply contracts

The Revenue System must be drafted and submitted to the DEQ (Technical Support Unit (TSU) of the Revolving Loan Section) in accordance with the project milestone schedule. TSU staff will review and comment on the draft Revenue System. The draft must be revised incorporating DEQ comments, then a final version submitted to the TSU for approval.

Once you have successfully completed the application form and received project plan approval, revenue system approval, and a construction permit, the DEQ may issue an Order of Approval to the MFA.

THE ORDER OF APPROVAL

The Director of the DEQ may exercise the authority vested in him by 1994 PA 451, Part 54 (Safe Drinking Water Assistance) and issue an “Order of Approval” after you have completed all the

application requirements for receiving assistance from the DWRF. This Order serves as legal notification to the MFA that it may proceed with the final steps of purchasing the bonds by using funds from the DWRF account.

The Order of Approval specifically references the dollar amount (rounded to the nearest \$5,000), term, and interest rate for the loan. It also specifies the date by which principal repayments must start. The following attachments are completed as part of the order:

- A cost summary identifying eligible amounts for each line item (e.g. design engineering, construction, bid advertisement, etc.), including a 6 percent loan contingency
- A description of the project, referencing the required construction permit(s)
- If applicable, special conditions placed upon the applicant

The DEQ's Order of Approval represents a binding commitment of loan funds to the water supplier. The Order is not a loan nor does it guarantee receipt of a loan. Final loan approval will depend on completion of typical finance requirements and activities under the purview of your bond counsel and the MFA. You will receive a copy of the Order at or before loan closing.

THE LOAN CLOSING

After the DEQ issues the Order of Approval, the MFA will contact you to close the loan and purchase the debt. This part of the DWRF process may seem almost anti-climactic to the applicant. Nevertheless, the loan closing is extremely important and demands your careful attention.

Various legal documents are necessary to purchase the debt instrument of the water supplier. In exchange for the bonds, the MFA establishes an account from which funds can be drawn as the project proceeds. You must deliver, in acceptable form, the following documents to the MFA to close on the loan:

- A supplemental agreement
- A bond resolution or authorizing ordinance
- A purchase contract
- An issuer's certificate
- A favorable opinion from your bond counsel addressed to the MFA
- The bond
- Approval or exception from prior approval from the Department of Treasury's Local Audit and Finance Division with respect to the issuance of the bond

Note: From the applicant's perspective, this is a municipal bond activity, subject to all applicable municipal debt, legal and financial requirements.

Under normal circumstances, the financing schedule permits a reasonable length of time to execute all of the loan closing documents. Up to two weeks is often available to allow adequate

time for pre-closing conferences and telephone calls. Final closing requires submission of the signed documents and delivery of the bond.

1. The Supplemental Agreement

The supplemental agreement contains all representations, covenants, and agreements between the water supplier, the MFA, and the DEQ. It includes assurances of compliance with all federal and state laws and contains exhibits to reflect project costs, and any additional special conditions imposed upon the water supplier (bond issuer).

2. The Bond Resolution or Ordinance

Adoption of the bond resolution or ordinance constitutes the official legal action taken by a water supplier that authorizes the issuance of the bonds to finance the project.

3. The Purchase Contract

The purchase contract is executed between the MFA and the water supplier to set forth the terms and conditions of the bond purchase. The MFA offers to purchase the bond contingent upon the terms, conditions, representations, warranties, and agreements made. The purchase is subject to the MFA's ability to disburse funds from the DWRF.

The issuer (water supplier) must agree that it has the full legal right, power, and authority to enter into the purchase contract and to sell and deliver the bonds.

The purchase contract sets forth the time and location for the delivery of the bond and the accompanying documents.

4. The Bond Counsel's Opinion

Before the MFA can purchase the bond, your bond counsel must deliver an opinion that states, in summary, that the bond has been duly authorized, executed, and delivered in accordance with applicable laws, and constitutes the valid and binding obligation of the water supplier.

5. The Bond

The bond certificate is the legal instrument of debt and is printed in a form acceptable to the MFA. Further explanations and the specific time frame for delivery of all documents may be addressed by the MFA in preparation for closing the loan.

Once again, the loan closing is critical. **You are advised to carefully select knowledgeable bond counsel and work closely with him/her from early in the planning process through the preparation and delivery of the loan documents.**

CONSTRUCTING THE PROJECT

Several activities occur before and during construction of DWRP-assisted projects. Some of these activities are described below.

1. Contract Award and Signing

The MFA cannot issue loan disbursements for construction costs until all contracts necessary to proceed with construction of the project have been signed and submitted to the DEQ. Signed construction contract documents must include the following:

- Agreement
- Addenda (if applicable)
- Payment Bond
- Performance Bond
- Notice of Award
- Notice to Proceed

Your DEQ project manager will review the signed contract documents to ensure they are complete before giving approval to process the first loan disbursement request containing construction costs.

2. Pre-construction Conference

All parties directly involved with the project should attend a pre-construction meeting. This meeting is normally arranged and scheduled by the consulting engineer. It provides an excellent opportunity to discuss details of the project, the proposed schedule, and all procedural considerations. Effective communication among the state and local officials and the hired consultants and contractors will help reduce delays caused by oversights.

3. Project Inspections

The DEQ may perform inspections of the project during construction. The initial visit may take place shortly after start of construction. Thereafter, additional inspections may occur at any time, or at the request of an affected party. The DEQ may conduct a final inspection before start-up of the facility. Any information collected at the inspections may be shared among DEQ staff as appropriate.

4. Change Orders

All change orders must be submitted to the DEQ for review and approval. Each change order should identify the change(s) made and provide an explanation of necessity for the change(s). The DEQ will review the change orders for DWRP eligibility and consistency with the project plan. In addition, a DEQ district engineer will review technical changes for permit requirements.

Contract time extensions can only be approved by change order. They are acceptable provided there is a legitimate reason for the extension. Approval of a time extension change order does not relieve the water supplier from complying with any enforcement schedule.

All unit price contracts should have final balancing change orders completed. This will result in a tally of the final as-built quantities for contract cost adjustment.

5. Minimal Cost Items

Services or equipment that cost less than \$50,000 and are procured without a formal competitive bidding process are defined as “minimal cost items.” (These items may be listed in the original loan if the information is available at the time of loan application.) You may purchase minimal cost items that were not in the original loan using the 6 percent contingency allocation. Each request must be accompanied by an explanation of the purchase and the reasons for including it in the scope of the project. At least two sources must be contacted, and the cost of the item must not be divided up to avoid the bidding process.

6. Initiation of Operation

You must provide a written notice of the initiation of operation date for the constructed facility to your DEQ project manager within 30 days of its occurrence.

The process of administrative completion may begin any time after the project initiates operation and final costs are established.

SUBMITTING AND RECEIVING **LOAN DISBURSEMENTS**

As construction of the project moves forward, draws on the DWRF will be needed to reimburse costs for contracted services. You may request your first disbursement immediately after loan closing to cover expenses incurred in the pre-construction phase. You should include the following costs in this first draw request, when applicable:

- Planning expenses
- Revenue system development
- Legal services
- Bond consultant services
- Design engineering services
- Other miscellaneous expenses

The DEQ will process subsequent requests for disbursement on a monthly cycle. A given disbursement request may be submitted any time during the month, but only one request per month will be processed. You are advised to work closely with all contractors to ensure that

their monthly invoices are delivered to you in time for inclusion in your next request for disbursement.

Generally, loan funds will be transferred to your bank by the MFA within ten working days of the DEQ's receipt of the disbursement request. This means faster payment of contractor invoices and should ensure a steady flow of funds throughout the project construction period.

The DEQ will accept disbursement request forms submitted by fax (with the exception of the first and last requests), provided they are completed and signed by the project's authorized representative.

ADMINISTRATIVE COMPLETION **AND LOAN REPAYMENTS**

Your DEQ project manager will review the final project cost documentation to determine the final loan amount and ensure program compliance. Approval of final costs will prompt final disbursement of loan funds, or repayment of any overdrawn funds. A final letter of notification indicating that the project has reached administrative completion will be sent to you. This will trigger a downward adjustment of the loan repayment schedule by the MFA, if applicable.

1. Records Retention

You must retain pertinent project files and/or records for a period of three years from the date of administrative completion. The required period lengthens if an audit or review is undertaken during the initial three years. You may opt to keep your records longer.

2. Loan Repayments

The MFA will send you a statement in advance of the due date for each semi-annual interest payment and annual principal payment, as outlined in the closing documents. This statement will include any instructions necessary for properly crediting the amount to your account.

Loan repayments are due semiannually on April 1 and October 1. Annual principal payments (due April 1 or October 1) begin within one year of project operation, while interest payments (due each April 1 and October 1) begin after the first loan draw and are determined by the MFA based on the amount of funds drawn.

Failure to make timely repayment to the DWRP constitutes default. The MFA will address remedies with you and your bond counsel. The MFA does have the legal authority to intercept other state aid payments to satisfy obligations of the water supplier. Questions regarding loan repayment should be directed to the MFA at 517-335-0994.

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OTHER AVAILABLE RESOURCES

DWRF Brochure

DWRF Project Planning Guidance

Disadvantaged Community Guidance

Applicant Action Guidance

Revolving Loan Section Guidance on Revenue Systems

DWRF Guidance Regarding Bidding Documents

Guidance Regarding Alternative Justifiable Expenditures (AJE) – DWRF version

DWRF Guidance Regarding the Construction Phase

The Loan Arranger—a Revolving Loan Section newsletter

State Revolving Fund (SRF) resources are also available for wastewater projects

PLEASE NOTE: The above materials are available upon request from the DEQ's Resource Management Division, Revolving Loan Section. Small orders are free; however, the state of Michigan may charge for photocopying if you are requesting a large order.



State of Michigan
Rick Snyder, Governor
Michigan Department of Environmental Quality
Dan Wyant, Director
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