

**REGULAR RULES AND REGULATIONS  
STATE LOAN AND INVESTMENT BOARD**

**Chapter 30**

**Clean Water State Revolving Fund Loans and Principal Forgiveness – Supplemental Appropriation Funding from the American Recovery and Reinvestment Act of 2009**

Section 1. Authority.

This Chapter is adopted pursuant to W. S. 16-1-203(a).

Section 2. Definitions.

As used in this Chapter:

- (a) "Board" means the State Loan and Investment Board.
- (b) "DEQ" means the Wyoming Department of Environmental Quality.
- (c) "Director" means the Director of the Office of State Lands and Investments.
- (d) "Handbook of Procedures" means the State Water Pollution Control Revolving Loan Account Handbook, Section 212.
- (e) "Municipalities" means incorporated towns and cities in Wyoming.
- (f) "Office" means the Office of State Lands and Investments.
- (g) "Special district" means water and sewer districts, improvement and service districts, solid waste disposal districts and irrigation districts in Wyoming.
- (h) "State environmental review process" (SERP) means a review by DEQ pursuant to W.S. 16-1-204(a) of potential environmental impacts of projects receiving assistance from the state water pollution control revolving loan account.
- (i) "Substantial completion" means that stage in a project when the capital infrastructure constructed is capable of initiating operations or can be used for its intended purpose.
- (j) "USEPA" means the United States Environmental Protection Agency.

Section 3. General Policy.

- (a) Funding for loans and principal forgiveness funding under this Chapter is

**REGULAR RULES AND REGULATIONS  
STATE LOAN AND INVESTMENT BOARD**

**Chapter 31**

**Drinking Water State Revolving Fund Loans and Principal Forgiveness – Supplemental Appropriation Funding from the American Recovery and Reinvestment Act of 2009**

Section 1. Authority.

- (a) This Chapter is adopted pursuant to W. S. 16-1-303(b).

Section 2. Definitions.

- (a) “Board” means the State Loan and Investment Board.
- (b) “Capacity Development” means that a community water system or nontransient noncommunity water system can adequately demonstrate that it has technical, managerial and financial capabilities to ensure current and future operations of the water system in accordance with all drinking water regulations in effect.
- (c) “Community Water System” means a public water supply which has at least fifteen (15) service connections used year-round by residents, or that regularly provides water to at least twenty-five (25) residents year-round, including, but not limited to, municipalities and water districts.
- (d) “DEQ” means the Wyoming Department of Environmental Quality.
- (e) “Director” means the Director of the Office of State Lands and Investments.
- (f) “Emergency” means a direct threat to the continued operation of a Community Water System.
- (g) “Handbook of Procedures” means the State Drinking Water Revolving Loan Account Handbook of Procedures.
- (h) “Intended Use Plan (IUP)” means the annual plan adopted by the State Loan and Investment Board and submitted to the United States Environmental Protection Agency (USEPA) that describes how the state intends to use the money in the Drinking Water Revolving Loan Account.
- (i) “Municipalities” means incorporated towns and cities in Wyoming.

(j) “Noncommunity Water System” means a public water supply which is not a Community Water System, including but not limited to, public schools, state park recreational areas and state highway public rest areas.

(k) “Office” means the Office of State Lands and Investments which provides administrative and operational management of programs for the State Loan and Investment Board.

(l) “Operator” means the person who is directly responsible for and in charge of the operation of a water treatment plant or water distribution system.

(m) “Priority List” means the list of projects expected to receive financial assistance under the Program, ranked in accordance with a priority system developed under Section 1452(b)(2)(A) of the Safe Drinking Water Act.

(n) “Program” means the drinking water state revolving fund program pursuant to Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300j-12).

(o) “Publicly Owned Water System” means a water system which is owned, operated, managed and maintained by an entity of the state, county, city, township, town, school district, water district, improvement district, joint powers board or any other entity constituting a political subdivision under the laws of this state which provides water for use and consumption of the general public through pipes and other constructed conveyances, and which is not owned, operated, managed or maintained by a private individual, association or corporation.

(p) “Safe Drinking Water Act” (SDWA) means the federal Safe Drinking Water Act including the 1996 amendments (Public Law 104-182, 42 U.S.C. § 300f et seq.).

(q) “Select Water Committee” means a state legislative committee comprised of six (6) members from the Wyoming State Senate and six (6) members from the Wyoming House of Representatives (W.S. 21-11-101).

(r) “Special district” means improvement and service districts and irrigation districts in Wyoming.

(s) “State environmental review process” (SERP) means a review by DEQ pursuant to W.S. 16-1-304(a) of potential environmental impacts of projects receiving assistance from the state drinking water revolving loan account.

(t) “Substantial completion” means that stage in a project when the capital infrastructure constructed is capable of initiating operations or can be used for its intended purpose.

(u) “Water Supply System” means a system from the water source to the consumer premises consisting of pipes, structures and facilities through which water is obtained, treated, stored, distributed or otherwise offered to the public for household use or use by humans and which is part of a community water system or a noncommunity water system.

(v) “WDO” means the Wyoming Water Development Office which provides administrative and operational management of the programs administered by the Wyoming Water Development Commission.

(w) “USEPA” means the United States Environmental Protection Agency

### Section 3. General Policy.

(a) Funding for loans and principal forgiveness under this Chapter is subject to a supplemental congressional appropriation in the American Recovery and Reinvestment Act of 2009. To facilitate key provisions of this Act the Board will consider funding applications for:

- i) Environmental protection and infrastructure investment that will provide long term economic benefits;
- ii) Green infrastructure, water or energy efficiency improvements or other environmentally innovative safe drinking water projects through August 17, 2009;
- iii) Conventional safe drinking water projects that can be under contract or construction not later than February 16, 2010; and
- iv) Refinancing or restructuring the debt obligations of eligible applicants where the debt was incurred on or after October 1, 2008.

(b) The Board shall award loans and principal forgiveness under the provisions of this Chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the State of Wyoming and represent a prudent use of available funding.

### Section 4. Loan and Principal Forgiveness Eligibility.

(a) Applicants. Publicly Owned Water Systems in Wyoming shall be eligible for loans and principal forgiveness under this Chapter. If the applicant is a special district or a joint powers board, it must be legally formed and approved prior to submitting its loan application. Applicants must be in compliance with all applicable reporting requirements of both the Wyoming Department of Revenue and the Wyoming Department of Audit prior to their application being considered by the Board.

(b) Purposes. Loans and principal forgiveness shall be awarded only for eligible Publicly Owned Water Systems as authorized in W. S. 16-1-305. Eligible projects may be

comprised of improvements to all components of a Water Supply System as appropriate and permitted by the Safe Drinking Water Act.

(c) Project Eligibility. Only priority list projects on the 2010 Drinking Water Intended Use Plan are eligible for loans and principal forgiveness under this Chapter.

(i) To the extent that there are sufficient eligible project applications, not less than twenty percent (20%) of the funds appropriated under this Chapter shall be reserved for safe drinking water projects comprised of green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(ii) The remaining funds appropriated under this Chapter shall be reserved for conventional safe drinking water projects. Preference will be given to those conventional projects that can be under contract or construction no later than January 1, 2010. The Board will not consider conventional projects that cannot be either under contract or commence construction by February 16, 2010.

(iii) Applications for eligible projects as set forth in the special funding reservation in subsection (c)(i) will be accepted for review by the Office only through August 17, 2009. Subsection (c)(i) projects are also further subject to the deadlines set forth in subsection (c)(ii) of this section. Thereafter, following Board action on all such subsection (c)(i) applications received, the Office will seek approval from USEPA to move any unobligated reserve funds in subsection (c)(i) to subsection (c)(ii) conventional safe drinking water projects. Upon USEPA approval, funds moved to subsection (c)(ii) become available for award by the Board for both green and conventional infrastructure projects.

(iv) To maximize loan funding utilization under this Chapter, and under Chapter 16 rules as established by the Board, the Board may require applicants to secure a portion of project funding from either Chapter 16 or other sources. All eligible applicants are eligible to receive a loan under this Chapter up to fifty percent (50%) of eligible project costs. All loans awarded under this subsection shall receive one hundred percent (100%) principal forgiveness up to fifty (50%) of eligible project costs.

(v) To maximize loan funding utilization under this Chapter only, the Board may award loans up to one hundred percent (100%) of eligible project costs. In addition, the Board may also award principal forgiveness up to one hundred percent (100%) for loans awarded under this subsection. The Board will use the following guidelines to determine appropriate loan and principal forgiveness percentages:

(A) the municipality either levied at least seven (7) mills for operating expenses including special districts levies chargeable against the general city or town levy during the current state fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of application and is utilizing all other local revenue sources

reasonably and legally available to finance the project; or

(B) The county or special district either levied at least eleven (11) mills for operating expenses during the current fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project.

(C) Additional factors that the Board may consider include, but are not limited to, an entity's Annual Median Household Income (AMHI) per the 2000 U.S. Decennial Census and the entity's water and sewer rates as compared to state wide averages.

(d) **Ineligible Project Costs.** The following project costs shall be ineligible for reimbursement:

- (i) Costs for any asset that is owned by a private property owner;
- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) For projects less than \$500,000, engineering fees, including design, inspection and contract administration costs exceeding thirty percent (30%) of project costs;
- (iv) For projects \$500,000 or more, engineering fees, including design, inspection and contract administration costs exceeding twenty percent (20%) of project costs;
- (v) All non-cash costs except land which is integral to the treatment process and if allowable under federal law;
- (vi) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vii) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (viii) Costs of tools and furnishings for capital projects, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes and blinds not integral to and necessary for the project;
- (ix) Legal fees;
- (x) Costs related to the issuance of bonds;

- (xi) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (xii) Costs to establish and form special districts or joint powers boards;
- (xiii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiv) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

#### Section 5. Application Procedure.

(a) Applications. Separate loan applications shall be prepared for each eligible project. Applicants shall submit a completed application on a form provided by the Office or as outlined in the Handbook of Procedures.

(b) Timing of Board Consideration. Applications must be received by the Director at least forty-five (45) days prior to any regular or special meeting of the Board. Applicants must cure any defects in their applications no later than twenty (20) calendar days before any regular or special meeting of the Board. The Board may consider applications for loans and principal forgiveness under this Chapter at any regular or special meeting.

(c) Incomplete Applications. Incomplete applications for loans may not be presented to the Board for consideration.

#### Section 6. Evaluation.

(a) Criteria. The Board shall evaluate applications for loans and principal forgiveness utilizing the following criteria:

(i) Whether the applicant is current on all its loan repayment obligations to the Board;

(ii) Whether the applicant's dedicated source(s) of repayment will be sufficient to repay the loan;

(iii) Whether the applicant's project addresses green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(iv) Whether the applicant's project can be under contract or construction by

January 1, 2010;

(v) Whether applicant's project fits a categorical exclusion from the state environmental review process or whether state environmental review process requirements can be timely met;

(vi) Whether the applicant has established an operations and maintenance costs fund for the project for which applicant seeks funding;

(vii) The financial need of the applicant as determined the Board;

(viii) Whether the applicant has made a significant commitment of funding resources for the project for which it seeks funding;

(ix) Whether the project is appropriately sized for the population to be served by the project;

(x) The percentage of the applicant's population directly served by the project;

(xi) Whether the applicant has an appropriate project Priority List ranking as required in Section 1452(b)(3) of the Safe Drinking Water Act and is listed on the fundable portion of the Intended Use Plan;

(xii) Whether the applicant can demonstrate Capacity Development capabilities in compliance with Section 1420(b)(3) of the Safe Drinking Water Act and the applicable requirements of DEQ;

(xiii) Whether the applicant can obtain or ensure the certification of the Operators of the Publicly Owned Water System in accordance with DEQ rules and regulations prior to obtaining financial assistance approval.

(b) Interagency Consultation. The Office shall facilitate interagency consultation with DEQ and WDO through the review of applications for loans and principal forgiveness and the opportunity to provide comments to the Director for Board consideration. DEQ and WDO will also provide the services required under W. S. 16-1-301 through W. S. 16-1-308.

#### Section 7. Board Consideration.

(a) The Board shall consider each complete application for loans and principal forgiveness and may allow for comments from the applicant and Director. The Board shall also establish the amount of loans and principal forgiveness awarded and the term of the loan. The term of loans awarded by the Board shall not exceed twenty (20) years.

#### Section 8. Interest Rates.



(a) The interest rate for all loans awarded under this Chapter shall be zero percent (0%).

#### Section 9. Post Award Due Diligence.

(a) Applicants awarded loans under this Chapter must be diligent in moving projects quickly from engineering and design to bid to contract to construction. Time is of the essence. Successful loan applicants must demonstrate their post award due diligence in monthly reports to the Director, received no later than the first (1<sup>st</sup>) day of each month following the month of loan award until such time as the project is under contract or commences construction. At a minimum these reports shall detail the steps a successful loan applicant has undertaken to move its project to contract or construction.

(b) In addition to the reporting requirements set forth in subsection (a) applicants will also submit reports as required by the Office and USEPA until their loan is closed.

(c) The Board reserves the right to cancel any previously awarded loans and/or principal forgiveness for lack of post award due diligence prior to January 1, 2010. Previously awarded loans and/or principal forgiveness under this Chapter are automatically relinquished on January 1, 2010 for projects not under contract or construction. Relinquishment of funding under this subsection is necessary to provide the Board time to award relinquished funding before the federal government deobligates Wyoming's capitalization grants on February 17, 2010. Such federal action would also preclude the State from sharing in a nationwide pool of deobligated funds.

#### Section 10. Repayment.

(a) Annual payments for all loans shall begin one year after substantial completion of the project as indicated in the final project contract.

#### Section 11. Disbursement of Loan Proceeds.

(a) Loan proceeds shall be disbursed in minimum draws of \$1,000. Requests for reimbursement shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursements. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within federal guidelines following review by the Office, DEQ and WDO.

#### Section 12. Audits and Inspections.

(a) The Board shall require records of loan recipients be audited annually by an independent accountant which may be part of the annual financial audit. The Board shall ensure compliance with the provisions of the federal Single Audit Act, 1996 Amendments and Office of Management and Budget (OMB) Circular A-133. The Board or its designee shall be

allowed access by loan recipient to inspect the construction and operation of the project. Loan recipients shall maintain project accounts in accordance with generally accepted government accounting standards.

### Section 13. Reports.

(a) The Director, or designee, shall review all reports prepared by the Office, DEQ and WDO for submission to the USEPA.

### Section 14. Funds Reserved.

(a) Four percent (4%) of the federal capitalization grant may be reserved to pay administrative costs of this program incurred by the Office and WDO. Any such reservation of funds shall be deposited into the Administrative Account.

### Section 15. Program Compliance.

(a) The Board shall administer funding under this Chapter in accordance with all applicable federal laws and regulations. In addition to the specific requirements contained in the American Recovery and Reinvestment Act of 2009 the Act also contains two (2) general provisions as follows: 1) Prevailing wage requirements per the Davis-Bacon Act apply to loans and principal forgiveness for projects awarded funding under this Chapter; and 2) All applicants receiving funding under this Chapter must verify that all iron, steel and manufactured goods used in their projects were manufactured in the United States unless a waiver is obtained from USEPA.

(b) There is no waiver available for the Davis-Bacon federal minimum wage requirement.

(c) In order to receive a waiver of the buy American iron, steel and manufactured goods requirement, applicants shall inform the Office of the need for a waiver and provide any necessary information. In turn, the Office shall send a written request for a waiver to the Administrator of USEPA.

(d) If a waiver is granted by the Administrator of USEPA, the USEPA will publish such waiver with a sufficient explanation in the Federal Register.

### Section 16. Fee Waiver.

(a) Administrative fees authorized by W.S.16-1-303(d) are waived for loans awarded by the Board under this Chapter.

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- (b) "DEQ" means the Wyoming Department of Environmental Quality.
- (c) "Director" means the Director of the Office of State Lands and Investments.
- (d) "Handbook of Procedures" means the State Water Pollution Control Revolving Loan Account Handbook, Section 212.
- (e) "Municipalities" means incorporated towns and cities in Wyoming.
- (f) "Office" means the Office of State Lands and Investments.
- (g) "Special district" means water and sewer districts, improvement and service districts, solid waste disposal districts and irrigation districts in Wyoming.
- (h) "State environmental review process" (SERP) means a review by DEQ pursuant to W.S. 16-1-204(a) of potential environmental impacts of projects receiving assistance from the state water pollution control revolving loan account.
- (i) "Substantial completion" means that stage in a project when the capital infrastructure constructed is capable of initiating operations or can be used for its intended purpose.
- (j) "USEPA" means the United States Environmental Protection Agency.

Section 3. General Policy.

- (a) Funding for loans and principal forgiveness funding under this Chapter is

subject to a supplemental congressional appropriation in the American Recovery and Reinvestment Act of 2009. To facilitate key provisions of this Act the Board will consider funding applications for:

- i) Environmental protection and infrastructure investment that will provide long term economic benefits;
- ii) Green infrastructure, water or energy efficiency improvements or other environmentally innovative safe drinking water projects through August 17, 2009;
- iii) Conventional safe drinking water projects that can be under contract or construction not later than February 16, 2010; and
- iv) Refinancing or restructuring the debt obligations of eligible applicants where the debt was incurred on or after October 1, 2008.

(b) The Board shall award loans and principal forgiveness under the provisions of this Chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the State of Wyoming and represent a prudent use of available funding.

#### Section 4. Loan and Principal Forgiveness Eligibility.

(a) Applicants. Municipalities, counties, special districts and joint powers boards in Wyoming shall be eligible for loans and principal forgiveness under this Chapter. DEQ may be eligible for loans and principal forgiveness under this Chapter. If the applicant is a special district or a joint powers board, it must be legally formed and approved prior to submitting its loan application. Applicants must be in compliance with all applicable reporting requirements of both the Wyoming Department of Revenue and the Wyoming Department of Audit prior to their application being considered by the Board.

(b) Purposes. Loans and principal forgiveness shall be awarded only for water pollution control purposes specified under W. S. 16-1-205 (a).

(c) Project Eligibility. Only projects on the 2010 Clean Water State Revolving Fund Intended Use Plan are eligible for loans and principal forgiveness under this Chapter.

(i) To the extent that there are sufficient eligible project applications, not less than twenty percent (20%) of the funds appropriated under this Chapter shall be reserved for water and sewer, storm water drainage and solid waste disposal projects comprised of green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(ii) The remaining funds appropriated under this Chapter shall be reserved for conventional water and sewer, storm water drainage and solid waste disposal projects. Preference will be given to those conventional projects that can be under contract or construction no later than January 1, 2010. The Board will not consider conventional projects

that cannot be either under contract or commence construction by February 16, 2010.

(iii) Applications for eligible projects as set forth in the special funding reservation in subsection (c)(i) will be accepted for review by the Office only through August 17, 2009. Subsection (c)(i) projects are also further subject to the deadlines set forth in subsection (c)(ii) of this section. Following Board action on all subsection (c)(i) applications received, the Office will seek approval from USEPA to move any unobligated reserve funds in subsection (c)(i) to subsection (c)(ii) conventional water and sewer, storm water drainage and solid waste disposal projects. Upon USEPA approval, funds moved to subsection (c)(ii) become available for award by the Board for both green and conventional infrastructure projects.

(iv) To maximize loan funding utilization under this Chapter, and under Chapter 11 rules as established by the Board, the Board may require applicants to secure a portion of project funding from either Chapter 11 or other sources. All eligible applicants are eligible to receive a loan under this Chapter up to fifty percent (50%) of eligible project costs. All loans awarded under this subsection shall receive one hundred percent (100%) principal forgiveness up to fifty (50%) of eligible project costs.

(v) To maximize loan funding utilization under this Chapter only, the Board may award loans up to one hundred percent (100%) of eligible project costs. In addition, the Board may also award principal forgiveness up to one hundred percent (100%) for loans awarded under this subsection. The Board will use the following guidelines to determine appropriate loan and principal forgiveness percentages:

(A) the municipality either levied at least seven (7) mills for operating expenses including special districts levies chargeable against the general city or town levy during the current state fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of application and is utilizing all other local revenue sources reasonably and legally available to finance the project; or

(B) The county or special district either levied at least eleven (11) mills for operating expenses during the current fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project.

(C) Additional factors that the Board may consider include, but are not limited to, an entity's Annual Median Household Income (AMHI) per the 2000 U.S. Decennial Census and the entity's water and sewer rates as compared to state wide averages.

(d) Ineligible Project Costs. The following project costs shall be ineligible for reimbursement:

(i) Costs for any asset that is owned by a private property owner;

- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) For projects less than \$500,000, engineering fees, including design, inspection and contract administration costs exceeding thirty percent (30%) of project costs;
- (iv) For projects \$500,000 or more, engineering fees, including design, inspection and contract administration costs exceeding twenty percent (20%) of project costs;
- (v) All non-cash costs except land which is integral to the treatment process and if allowable under federal law;
- (vi) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vii) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (viii) Costs of tools and furnishings for capital projects, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes and blinds not integral to and necessary for the project;
- (ix) Legal fees;
- (x) Costs related to the issuance of bonds;
- (xi) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (xii) Costs to establish and form special districts or joint powers boards;
- (xiii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiv) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

#### Section 5. Application Procedure.

(a) Applications. Separate loan applications shall be prepared for each eligible project. Applicants shall submit a completed application on a form provided by the Director as outlined in the Handbook of Procedures.

(b) Timing of Board Consideration. Applications must be received by the Director at least forty-five (45) days prior to any regular or special meeting of the Board. Applicants must cure any defects in their applications no later than twenty (20) calendar days before any regular or special meeting of the Board. The Board may consider applications for loans under this Chapter at any regular or special meeting.

(c) Incomplete Applications. Incomplete applications for loans may not be presented to the Board for consideration.

#### Section 6. Evaluation.

(a) Criteria. The Board shall evaluate applications for loans and principal forgiveness utilizing the following criteria:

(i) Whether the applicant is current on all its loan repayment obligations to the Board;

(ii) Whether the applicant's dedicated source(s) of revenue will be sufficient to repay the loan;

(iii) Whether the applicant's project addresses green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(iv) Whether the applicant's project can be under contract or construction by January 1, 2010;

(v) Whether the applicant's project fits a categorical exclusion from the state environmental review process or whether state environmental review process requirements can be timely met;

(vi) Whether the applicant has established an operations and maintenance costs fund for the project for which applicant seeks funding;

(vii) The financial need of the applicant as determined by the Board;

(viii) Whether the applicant has made a significant commitment of funding resources for the project for which it seeks funding;

(ix) Whether the project is appropriately sized for the population to be served by the project;

(x) The percentage of the applicant's population directly served by the project.

(b) Interagency Consultation. The Office shall facilitate interagency consultation

with DEQ through the review of applications for loans and principal forgiveness and the opportunity to provide comments to the Director for Board consideration. DEQ shall provide the services required under W. S. 16-1-201 through W. S. 16-1-207.

#### Section 7. Board Consideration.

(a) The Board shall consider each loan application and may allow for comments from the applicant and from the Director. The Board shall also establish the amount of loans and principal forgiveness awarded and the term of the loan. The term of loans awarded by the Board shall not exceed twenty (20) years.

#### Section 8. Interest Rates.

(a) The interest rate for all loans awarded under this Chapter shall be zero percent (0%).

(b) If loans under this Chapter to DEQ are permissible under federal law, such loans for corrective actions at leaking underground storage tank sites shall be zero percent (0%) pursuant to Chapter 14 of the rules as established by the Board.

#### Section 9. Post Award Due Diligence.

(a) Applicants awarded loans under this Chapter must be diligent in moving projects quickly from engineering and design to bid to contract to construction. Time is of the essence. Successful loan applicants must demonstrate their post award due diligence in monthly reports to the Director, received no later than the first (1<sup>st</sup>) day of each month following the month of loan award to the point until such time as the project is under contract or commences construction. At a minimum these reports shall detail the steps a successful loan applicant has undertaken to move its project to contract or construction.

(b) In addition to the reporting requirements set forth in subsection (a) applicants will also submit reports as required by the Office and USEPA until their loan is closed.

(c) The Board reserves the right to cancel any previously awarded loans and/or principal forgiveness for lack of post award due diligence prior to January 1, 2010. Previously awarded loans and/or principal forgiveness under this Chapter are automatically relinquished on January 1, 2010 for projects not under contract or construction. Relinquishment of funding under this subsection is necessary to provide the Board time to award relinquished funding before the federal government deobligates Wyoming's capitalization grants on February 17, 2010. Such federal action would also preclude the State from sharing in a nationwide pool of deobligated funds.

#### Section 10. Repayment

(a) Annual payments for all loans shall begin one year after substantial completion



of the project as indicated in the final project contract.

#### Section 11. Disbursement of Loan Proceeds.

(a) Loan proceeds shall be disbursed in minimum draws of \$1,000. Requests for disbursements shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursements. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within federal guidelines following review by the Office and DEQ.

#### Section 12. Audits and Inspections.

(a) The Board may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project. Borrowers shall maintain project accounts in accordance with generally accepted government accounting standards.

#### Section 13. Reports.

(a) The Director, or designee, shall review all reports prepared by the Office and DEQ for submission to the USEPA.

#### Section 14. Funds Reserved.

(a) Four percent (4%) of the federal capitalization grant may be reserved to pay administrative costs of this program incurred by the Office and DEQ.

#### Section 15. Program Compliance.

(a) The Board shall administer funding under this Chapter in accordance with all applicable federal laws and regulations. In addition to the specific requirements contained in the American Recovery and Reinvestment Act of 2009 the Act also contains two (2) general provisions as follows: 1) Prevailing wage requirements per the Davis-Bacon Act apply to loans and principal forgiveness for projects awarded funding under this Chapter; and 2) All applicants receiving funding under this Chapter must verify that all iron, steel and manufactured goods used in their projects were manufactured in the United States unless a waiver is obtained from USEPA.

(b) There is no waiver available for the Davis-Bacon federal prevailing wage requirement.

(c) In order to receive a waiver of the buy American iron, steel and manufactured goods requirement, applicants shall inform the Office of the need for a waiver and provide any necessary information. In turn, the Office shall send a written request for a waiver to the Administrator of USEPA.

(d) If a waiver is granted by the Administrator of USEPA, the USEPA will publish such waiver with a sufficient explanation in the Federal Register.

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Section 1. Authority.

- (a) This Chapter is adopted pursuant to W. S. 16-1-303(b).

Section 2. Definitions.

- (a) “Board” means the State Loan and Investment Board.
- (b) “Capacity Development” means that a community water system or nontransient noncommunity water system can adequately demonstrate that it has technical, managerial and financial capabilities to ensure current and future operations of the water system in accordance with all drinking water regulations in effect.
- (c) “Community Water System” means a public water supply which has at least fifteen (15) service connections used year-round by residents, or that regularly provides water to at least twenty-five (25) residents year-round, including, but not limited to, municipalities and water districts.
- (d) “DEQ” means the Wyoming Department of Environmental Quality.
- (e) “Director” means the Director of the Office of State Lands and Investments.
- (f) “Emergency” means a direct threat to the continued operation of a Community Water System.
- (g) “Handbook of Procedures” means the State Drinking Water Revolving Loan Account Handbook of Procedures.
- (h) “Intended Use Plan (IUP)” means the annual plan adopted by the State Loan and Investment Board and submitted to the United States Environmental Protection Agency (USEPA) that describes how the state intends to use the money in the Drinking Water Revolving Loan Account.
- (i) “Municipalities” means incorporated towns and cities in Wyoming.

(j) “Noncommunity Water System” means a public water supply which is not a Community Water System, including but not limited to, public schools, state park recreational areas and state highway public rest areas.

(k) “Office” means the Office of State Lands and Investments which provides administrative and operational management of programs for the State Loan and Investment Board.

(l) “Operator” means the person who is directly responsible for and in charge of the operation of a water treatment plant or water distribution system.

(m) “Priority List” means the list of projects expected to receive financial assistance under the Program, ranked in accordance with a priority system developed under Section 1452(b)(2)(A) of the Safe Drinking Water Act.

(n) “Program” means the drinking water state revolving fund program pursuant to Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300j-12).

(o) “Publicly Owned Water System” means a water system which is owned, operated, managed and maintained by an entity of the state, county, city, township, town, school district, water district, improvement district, joint powers board or any other entity constituting a political subdivision under the laws of this state which provides water for use and consumption of the general public through pipes and other constructed conveyances, and which is not owned, operated, managed or maintained by a private individual, association or corporation.

(p) “Safe Drinking Water Act” (SDWA) means the federal Safe Drinking Water Act including the 1996 amendments (Public Law 104-182, 42 U.S.C. § 300f et seq.).

(q) “Select Water Committee” means a state legislative committee comprised of six (6) members from the Wyoming State Senate and six (6) members from the Wyoming House of Representatives (W.S. 21-11-101).

(r) “Special district” means improvement and service districts and irrigation districts in Wyoming.

(s) “State environmental review process” (SERP) means a review by DEQ pursuant to W.S. 16-1-304(a) of potential environmental impacts of projects receiving assistance from the state drinking water revolving loan account.

(t) “Substantial completion” means that stage in a project when the capital infrastructure constructed is capable of initiating operations or can be used for its intended purpose.

(u) “Water Supply System” means a system from the water source to the consumer premises consisting of pipes, structures and facilities through which water is obtained, treated, stored, distributed or otherwise offered to the public for household use or use by humans and which is part of a community water system or a noncommunity water system.

(v) “WDO” means the Wyoming Water Development Office which provides administrative and operational management of the programs administered by the Wyoming Water Development Commission.

(w) “USEPA” means the United States Environmental Protection Agency

### Section 3. General Policy.

(a) Funding for loans and principal forgiveness under this Chapter is subject to a supplemental congressional appropriation in the American Recovery and Reinvestment Act of 2009. To facilitate key provisions of this Act the Board will consider funding applications for:

- i) Environmental protection and infrastructure investment that will provide long term economic benefits;
- ii) Green infrastructure, water or energy efficiency improvements or other environmentally innovative safe drinking water projects through August 17, 2009;
- iii) Conventional safe drinking water projects that can be under contract or construction not later than February 16, 2010; and
- iv) Refinancing or restructuring the debt obligations of eligible applicants where the debt was incurred on or after October 1, 2008.

(b) The Board shall award loans and principal forgiveness under the provisions of this Chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the State of Wyoming and represent a prudent use of available funding.

### Section 4. Loan and Principal Forgiveness Eligibility.

(a) Applicants. Publicly Owned Water Systems in Wyoming shall be eligible for loans and principal forgiveness under this Chapter. If the applicant is a special district or a joint powers board, it must be legally formed and approved prior to submitting its loan application. Applicants must be in compliance with all applicable reporting requirements of both the Wyoming Department of Revenue and the Wyoming Department of Audit prior to their application being considered by the Board.

(b) Purposes. Loans and principal forgiveness shall be awarded only for eligible Publicly Owned Water Systems as authorized in W. S. 16-1-305. Eligible projects may be

comprised of improvements to all components of a Water Supply System as appropriate and permitted by the Safe Drinking Water Act.

(c) Project Eligibility. Only priority list projects on the 2010 Drinking Water Intended Use Plan are eligible for loans and principal forgiveness under this Chapter.

(i) To the extent that there are sufficient eligible project applications, not less than twenty percent (20%) of the funds appropriated under this Chapter shall be reserved for safe drinking water projects comprised of green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(ii) The remaining funds appropriated under this Chapter shall be reserved for conventional safe drinking water projects. Preference will be given to those conventional projects that can be under contract or construction no later than January 1, 2010. The Board will not consider conventional projects that cannot be either under contract or commence construction by February 16, 2010.

(iii) Applications for eligible projects as set forth in the special funding reservation in subsection (c)(i) will be accepted for review by the Office only through August 17, 2009. Subsection (c)(i) projects are also further subject to the deadlines set forth in subsection (c)(ii) of this section. Thereafter, following Board action on all such subsection (c)(i) applications received, the Office will seek approval from USEPA to move any unobligated reserve funds in subsection (c)(i) to subsection (c)(ii) conventional safe drinking water projects. Upon USEPA approval, funds moved to subsection (c)(ii) become available for award by the Board for both green and conventional infrastructure projects.

(iv) To maximize loan funding utilization under this Chapter, and under Chapter 16 rules as established by the Board, the Board may require applicants to secure a portion of project funding from either Chapter 16 or other sources. All eligible applicants are eligible to receive a loan under this Chapter up to fifty percent (50%) of eligible project costs. All loans awarded under this subsection shall receive one hundred percent (100%) principal forgiveness up to fifty (50%) of eligible project costs.

(v) To maximize loan funding utilization under this Chapter only, the Board may award loans up to one hundred percent (100%) of eligible project costs. In addition, the Board may also award principal forgiveness up to one hundred percent (100%) for loans awarded under this subsection. The Board will use the following guidelines to determine appropriate loan and principal forgiveness percentages:

(A) the municipality either levied at least seven (7) mills for operating expenses including special districts levies chargeable against the general city or town levy during the current state fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of application and is utilizing all other local revenue sources

reasonably and legally available to finance the project; or

(B) The county or special district either levied at least eleven (11) mills for operating expenses during the current fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project.

(C) Additional factors that the Board may consider include, but are not limited to, an entity's Annual Median Household Income (AMHI) per the 2000 U.S. Decennial Census and the entity's water and sewer rates as compared to state wide averages.

(d) **Ineligible Project Costs.** The following project costs shall be ineligible for reimbursement:

- (i) Costs for any asset that is owned by a private property owner;
- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) For projects less than \$500,000, engineering fees, including design, inspection and contract administration costs exceeding thirty percent (30%) of project costs;
- (iv) For projects \$500,000 or more, engineering fees, including design, inspection and contract administration costs exceeding twenty percent (20%) of project costs;
- (v) All non-cash costs except land which is integral to the treatment process and if allowable under federal law;
- (vi) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vii) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (viii) Costs of tools and furnishings for capital projects, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes and blinds not integral to and necessary for the project;
- (ix) Legal fees;
- (x) Costs related to the issuance of bonds;

- (xi) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (xii) Costs to establish and form special districts or joint powers boards;
- (xiii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiv) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

#### Section 5. Application Procedure.

(a) Applications. Separate loan applications shall be prepared for each eligible project. Applicants shall submit a completed application on a form provided by the Office or as outlined in the Handbook of Procedures.

(b) Timing of Board Consideration. Applications must be received by the Director at least forty-five (45) days prior to any regular or special meeting of the Board. Applicants must cure any defects in their applications no later than twenty (20) calendar days before any regular or special meeting of the Board. The Board may consider applications for loans and principal forgiveness under this Chapter at any regular or special meeting.

(c) Incomplete Applications. Incomplete applications for loans may not be presented to the Board for consideration.

#### Section 6. Evaluation.

(a) Criteria. The Board shall evaluate applications for loans and principal forgiveness utilizing the following criteria:

(i) Whether the applicant is current on all its loan repayment obligations to the Board;

(ii) Whether the applicant's dedicated source(s) of repayment will be sufficient to repay the loan;

(iii) Whether the applicant's project addresses green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(iv) Whether the applicant's project can be under contract or construction by



January 1, 2010;

(v) Whether applicant's project fits a categorical exclusion from the state environmental review process or whether state environmental review process requirements can be timely met;

(vi) Whether the applicant has established an operations and maintenance costs fund for the project for which applicant seeks funding;

(vii) The financial need of the applicant as determined the Board;

(viii) Whether the applicant has made a significant commitment of funding resources for the project for which it seeks funding;

(ix) Whether the project is appropriately sized for the population to be served by the project;

(x) The percentage of the applicant's population directly served by the project;

(xi) Whether the applicant has an appropriate project Priority List ranking as required in Section 1452(b)(3) of the Safe Drinking Water Act and is listed on the fundable portion of the Intended Use Plan;

(xii) Whether the applicant can demonstrate Capacity Development capabilities in compliance with Section 1420(b)(3) of the Safe Drinking Water Act and the applicable requirements of DEQ;

(xiii) Whether the applicant can obtain or ensure the certification of the Operators of the Publicly Owned Water System in accordance with DEQ rules and regulations prior to obtaining financial assistance approval.

(b) Interagency Consultation. The Office shall facilitate interagency consultation with DEQ and WDO through the review of applications for loans and principal forgiveness and the opportunity to provide comments to the Director for Board consideration. DEQ and WDO will also provide the services required under W. S. 16-1-301 through W. S. 16-1-308.

#### Section 7. Board Consideration.

(a) The Board shall consider each complete application for loans and principal forgiveness and may allow for comments from the applicant and Director. The Board shall also establish the amount of loans and principal forgiveness awarded and the term of the loan. The term of loans awarded by the Board shall not exceed twenty (20) years.

#### Section 8. Interest Rates.

(a) The interest rate for all loans awarded under this Chapter shall be zero percent (0%).

#### Section 9. Post Award Due Diligence.

(a) Applicants awarded loans under this Chapter must be diligent in moving projects quickly from engineering and design to bid to contract to construction. Time is of the essence. Successful loan applicants must demonstrate their post award due diligence in monthly reports to the Director, received no later than the first (1<sup>st</sup>) day of each month following the month of loan award until such time as the project is under contract or commences construction. At a minimum these reports shall detail the steps a successful loan applicant has undertaken to move its project to contract or construction.

(b) In addition to the reporting requirements set forth in subsection (a) applicants will also submit reports as required by the Office and USEPA until their loan is closed.

(c) The Board reserves the right to cancel any previously awarded loans and/or principal forgiveness for lack of post award due diligence prior to January 1, 2010. Previously awarded loans and/or principal forgiveness under this Chapter are automatically relinquished on January 1, 2010 for projects not under contract or construction. Relinquishment of funding under this subsection is necessary to provide the Board time to award relinquished funding before the federal government deobligates Wyoming's capitalization grants on February 17, 2010. Such federal action would also preclude the State from sharing in a nationwide pool of deobligated funds.

#### Section 10. Repayment.

(a) Annual payments for all loans shall begin one year after substantial completion of the project as indicated in the final project contract.

#### Section 11. Disbursement of Loan Proceeds.

(a) Loan proceeds shall be disbursed in minimum draws of \$1,000. Requests for reimbursement shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursements. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within federal guidelines following review by the Office, DEQ and WDO.

#### Section 12. Audits and Inspections.

(a) The Board shall require records of loan recipients be audited annually by an independent accountant which may be part of the annual financial audit. The Board shall ensure compliance with the provisions of the federal Single Audit Act, 1996 Amendments and Office of Management and Budget (OMB) Circular A-133. The Board or its designee shall be

allowed access by loan recipient to inspect the construction and operation of the project. Loan recipients shall maintain project accounts in accordance with generally accepted government accounting standards.

#### Section 13. Reports.

(a) The Director, or designee, shall review all reports prepared by the Office, DEQ and WDO for submission to the USEPA.

#### Section 14. Funds Reserved.

(a) Four percent (4%) of the federal capitalization grant may be reserved to pay administrative costs of this program incurred by the Office and WDO. Any such reservation of funds shall be deposited into the Administrative Account.

#### Section 15. Program Compliance.

(a) The Board shall administer funding under this Chapter in accordance with all applicable federal laws and regulations. In addition to the specific requirements contained in the American Recovery and Reinvestment Act of 2009 the Act also contains two (2) general provisions as follows: 1) Prevailing wage requirements per the Davis-Bacon Act apply to loans and principal forgiveness for projects awarded funding under this Chapter; and 2) All applicants receiving funding under this Chapter must verify that all iron, steel and manufactured goods used in their projects were manufactured in the United States unless a waiver is obtained from USEPA.

(b) There is no waiver available for the Davis-Bacon federal minimum wage requirement.

(c) In order to receive a waiver of the buy American iron, steel and manufactured goods requirement, applicants shall inform the Office of the need for a waiver and provide any necessary information. In turn, the Office shall send a written request for a waiver to the Administrator of USEPA.

(d) If a waiver is granted by the Administrator of USEPA, the USEPA will publish such waiver with a sufficient explanation in the Federal Register.

#### Section 16. Fee Waiver.

(a) Administrative fees authorized by W.S.16-1-303(d) are waived for loans awarded by the Board under this Chapter.

subject to a supplemental congressional appropriation in the American Recovery and Reinvestment Act of 2009. To facilitate key provisions of this Act the Board will consider funding applications for:

- i) Environmental protection and infrastructure investment that will provide long term economic benefits;
- ii) Green infrastructure, water or energy efficiency improvements or other environmentally innovative safe drinking water projects through August 17, 2009;
- iii) Conventional safe drinking water projects that can be under contract or construction not later than February 16, 2010; and
- iv) Refinancing or restructuring the debt obligations of eligible applicants where the debt was incurred on or after October 1, 2008.

(b) The Board shall award loans and principal forgiveness under the provisions of this Chapter in such a manner and to such applicants as shall, in the judgment of the Board, inure to the greatest benefit of the citizens of the State of Wyoming and represent a prudent use of available funding.

#### Section 4. Loan and Principal Forgiveness Eligibility.

(a) Applicants. Municipalities, counties, special districts and joint powers boards in Wyoming shall be eligible for loans and principal forgiveness under this Chapter. DEQ may be eligible for loans and principal forgiveness under this Chapter. If the applicant is a special district or a joint powers board, it must be legally formed and approved prior to submitting its loan application. Applicants must be in compliance with all applicable reporting requirements of both the Wyoming Department of Revenue and the Wyoming Department of Audit prior to their application being considered by the Board.

(b) Purposes. Loans and principal forgiveness shall be awarded only for water pollution control purposes specified under W. S. 16-1-205 (a).

(c) Project Eligibility. Only projects on the 2010 Clean Water State Revolving Fund Intended Use Plan are eligible for loans and principal forgiveness under this Chapter.

(i) To the extent that there are sufficient eligible project applications, not less than twenty percent (20%) of the funds appropriated under this Chapter shall be reserved for water and sewer, storm water drainage and solid waste disposal projects comprised of green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(ii) The remaining funds appropriated under this Chapter shall be reserved for conventional water and sewer, storm water drainage and solid waste disposal projects. Preference will be given to those conventional projects that can be under contract or construction no later than January 1, 2010. The Board will not consider conventional projects

that cannot be either under contract or commence construction by February 16, 2010.

(iii) Applications for eligible projects as set forth in the special funding reservation in subsection (c)(i) will be accepted for review by the Office only through August 17, 2009. Subsection (c)(i) projects are also further subject to the deadlines set forth in subsection (c)(ii) of this section. Following Board action on all subsection (c)(i) applications received, the Office will seek approval from USEPA to move any unobligated reserve funds in subsection (c)(i) to subsection (c)(ii) conventional water and sewer, storm water drainage and solid waste disposal projects. Upon USEPA approval, funds moved to subsection (c)(ii) become available for award by the Board for both green and conventional infrastructure projects.

(iv) To maximize loan funding utilization under this Chapter, and under Chapter 11 rules as established by the Board, the Board may require applicants to secure a portion of project funding from either Chapter 11 or other sources. All eligible applicants are eligible to receive a loan under this Chapter up to fifty percent (50%) of eligible project costs. All loans awarded under this subsection shall receive one hundred percent (100%) principal forgiveness up to fifty (50%) of eligible project costs.

(v) To maximize loan funding utilization under this Chapter only, the Board may award loans up to one hundred percent (100%) of eligible project costs. In addition, the Board may also award principal forgiveness up to one hundred percent (100%) for loans awarded under this subsection. The Board will use the following guidelines to determine appropriate loan and principal forgiveness percentages:

(A) the municipality either levied at least seven (7) mills for operating expenses including special districts levies chargeable against the general city or town levy during the current state fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of application and is utilizing all other local revenue sources reasonably and legally available to finance the project; or

(B) The county or special district either levied at least eleven (11) mills for operating expenses during the current fiscal year or is imposing the optional tax permitted by W.S. 39-15-204(a)(i) or (iii) at the time of the application and is utilizing all other local revenue sources reasonably and legally available to finance the project.

(C) Additional factors that the Board may consider include, but are not limited to, an entity's Annual Median Household Income (AMHI) per the 2000 U.S. Decennial Census and the entity's water and sewer rates as compared to state wide averages.

(d) Ineligible Project Costs. The following project costs shall be ineligible for reimbursement:

(i) Costs for any asset that is owned by a private property owner;

- (ii) Costs for tap fees, sewer and water fees, and plant investment fees;
- (iii) For projects less than \$500,000, engineering fees, including design, inspection and contract administration costs exceeding thirty percent (30%) of project costs;
- (iv) For projects \$500,000 or more, engineering fees, including design, inspection and contract administration costs exceeding twenty percent (20%) of project costs;
- (v) All non-cash costs except land which is integral to the treatment process and if allowable under federal law;
- (vi) Costs for preparation or presentation of grant or loan applications for any source of funding;
- (vii) Costs for transportation, meals and lodging incurred anywhere away from the site of the project;
- (viii) Costs of tools and furnishings for capital projects, including but not limited to, capital equipment, hammers, tanks, tools, furniture, drapes and blinds not integral to and necessary for the project;
- (ix) Legal fees;
- (x) Costs related to the issuance of bonds;
- (xi) Costs for real property in excess of current fair market value and/or costs for an amount of real property in excess of that needed for project purposes;
- (xii) Costs to establish and form special districts or joint powers boards;
- (xiii) Costs incurred prior to loan award, except costs incurred for architectural and engineering design, surveying, state environmental review process (SERP) requirements or in emergency circumstances;
- (xiv) Costs for a contingency or extra work allowance in excess of ten percent (10%) of estimated construction costs.

#### Section 5. Application Procedure.

(a) Applications. Separate loan applications shall be prepared for each eligible project. Applicants shall submit a completed application on a form provided by the Director as outlined in the Handbook of Procedures.

(b) Timing of Board Consideration. Applications must be received by the Director at least forty-five (45) days prior to any regular or special meeting of the Board. Applicants must cure any defects in their applications no later than twenty (20) calendar days before any regular or special meeting of the Board. The Board may consider applications for loans under this Chapter at any regular or special meeting.

(c) Incomplete Applications. Incomplete applications for loans may not be presented to the Board for consideration.

#### Section 6. Evaluation.

(a) Criteria. The Board shall evaluate applications for loans and principal forgiveness utilizing the following criteria:

(i) Whether the applicant is current on all its loan repayment obligations to the Board;

(ii) Whether the applicant's dedicated source(s) of revenue will be sufficient to repay the loan;

(iii) Whether the applicant's project addresses green infrastructure, water or energy efficiency improvements or other environmentally innovative activities;

(iv) Whether the applicant's project can be under contract or construction by January 1, 2010;

(v) Whether the applicant's project fits a categorical exclusion from the state environmental review process or whether state environmental review process requirements can be timely met;

(vi) Whether the applicant has established an operations and maintenance costs fund for the project for which applicant seeks funding;

(vii) The financial need of the applicant as determined by the Board;

(viii) Whether the applicant has made a significant commitment of funding resources for the project for which it seeks funding;

(ix) Whether the project is appropriately sized for the population to be served by the project;

(x) The percentage of the applicant's population directly served by the project.

(b) Interagency Consultation. The Office shall facilitate interagency consultation

with DEQ through the review of applications for loans and principal forgiveness and the opportunity to provide comments to the Director for Board consideration. DEQ shall provide the services required under W. S. 16-1-201 through W. S. 16-1-207.

#### Section 7. Board Consideration.

(a) The Board shall consider each loan application and may allow for comments from the applicant and from the Director. The Board shall also establish the amount of loans and principal forgiveness awarded and the term of the loan. The term of loans awarded by the Board shall not exceed twenty (20) years.

#### Section 8. Interest Rates.

(a) The interest rate for all loans awarded under this Chapter shall be zero percent (0%).

(b) If loans under this Chapter to DEQ are permissible under federal law, such loans for corrective actions at leaking underground storage tank sites shall be zero percent (0%) pursuant to Chapter 14 of the rules as established by the Board.

#### Section 9. Post Award Due Diligence.

(a) Applicants awarded loans under this Chapter must be diligent in moving projects quickly from engineering and design to bid to contract to construction. Time is of the essence. Successful loan applicants must demonstrate their post award due diligence in monthly reports to the Director, received no later than the first (1<sup>st</sup>) day of each month following the month of loan award to the point until such time as the project is under contract or commences construction. At a minimum these reports shall detail the steps a successful loan applicant has undertaken to move its project to contract or construction.

(b) In addition to the reporting requirements set forth in subsection (a) applicants will also submit reports as required by the Office and USEPA until their loan is closed.

(c) The Board reserves the right to cancel any previously awarded loans and/or principal forgiveness for lack of post award due diligence prior to January 1, 2010. Previously awarded loans and/or principal forgiveness under this Chapter are automatically relinquished on January 1, 2010 for projects not under contract or construction. Relinquishment of funding under this subsection is necessary to provide the Board time to award relinquished funding before the federal government deobligates Wyoming's capitalization grants on February 17, 2010. Such federal action would also preclude the State from sharing in a nationwide pool of deobligated funds.

#### Section 10. Repayment

(a) Annual payments for all loans shall begin one year after substantial completion



of the project as indicated in the final project contract.

#### Section 11. Disbursement of Loan Proceeds.

(a) Loan proceeds shall be disbursed in minimum draws of \$1,000. Requests for disbursements shall be submitted on a form provided by the Director and include supporting invoices establishing the eligibility of costs submitted for disbursements. Loan proceeds will only be disbursed for eligible project costs as set forth in this Chapter and within federal guidelines following review by the Office and DEQ.

#### Section 12. Audits and Inspections.

(a) The Board may, at its expense, conduct an audit of the records of the applicant and inspect the construction and operation of the project. Borrowers shall maintain project accounts in accordance with generally accepted government accounting standards.

#### Section 13. Reports.

(a) The Director, or designee, shall review all reports prepared by the Office and DEQ for submission to the USEPA.

#### Section 14. Funds Reserved.

(a) Four percent (4%) of the federal capitalization grant may be reserved to pay administrative costs of this program incurred by the Office and DEQ.

#### Section 15. Program Compliance.

(a) The Board shall administer funding under this Chapter in accordance with all applicable federal laws and regulations. In addition to the specific requirements contained in the American Recovery and Reinvestment Act of 2009 the Act also contains two (2) general provisions as follows: 1) Prevailing wage requirements per the Davis-Bacon Act apply to loans and principal forgiveness for projects awarded funding under this Chapter; and 2) All applicants receiving funding under this Chapter must verify that all iron, steel and manufactured goods used in their projects were manufactured in the United States unless a waiver is obtained from USEPA.

(b) There is no waiver available for the Davis-Bacon federal prevailing wage requirement.

(c) In order to receive a waiver of the buy American iron, steel and manufactured goods requirement, applicants shall inform the Office of the need for a waiver and provide any necessary information. In turn, the Office shall send a written request for a waiver to the Administrator of USEPA.

(d) If a waiver is granted by the Administrator of USEPA, the USEPA will publish such waiver with a sufficient explanation in the Federal Register.