




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
WATER

MEMORANDUM

SUBJECT: Clarification of Certain Eligible Uses of DWSRF Set Asides
FROM: 
Steve Heare, Director
Drinking Water Protection Division
TO: DWSRF Branch Chiefs, Regions 1-10
PWSS Branch Chiefs, Regions 1-10
Source Water Protection Branch Chiefs, Regions 1-10

I am writing to reiterate and further clarify certain uses among the broad range of State and water utility planning and program implementation activities eligible for funding under the DWSRF set-asides. Recently, my staff has spoken with several States and Regions about potential uses of DWSRF set-asides to support State-wide water supply planning initiatives. We also continue to address many questions on potential use of DWSRF set-asides to support planning for sustainable infrastructure and water supply contingencies, and regarding the maturing implementation of source water protection programs.

The SDWA and the DWSRF Interim Final Rule provide States with considerable flexibility on the specific activities they may wish to fund through DWSRF set-asides. This flexibility is of course bounded by the purposes for which the set-asides are authorized and by the specific terms of the statute and regulation. I wish to focus this memorandum on the 10% State Program Management Set-Aside (referred to here as "10% State Program") authorized by section 1452(g)(2) of SDWA, and on the 15% Local Assistance and Other State Programs Set-Aside ("15% Local Assistance") authorized by section 1452(k), about which we receive essentially all the questions.

General Scope of Set-Aside Uses

This table summarizes the relevant scope and key features of these two set-asides:

Set-Aside	Eligible Uses	Additional Match Required	Can Authority to Take this Set-Aside be Banked?
<p>10% State Program Management</p> <p>1452(g)(2)</p>	<p>*for Public Water System Supervision (PWSS) Programs under Section 1443(a)</p> <p>*to administer or provide technical assistance (not for enforcement actions) through source water protection programs</p> <p>*to develop and implement a capacity development strategy under section 1420(c)</p> <p>*for an operator certification program for purposes of meeting the requirements of section 1419</p>	<p>1:1 (half can be from a credit for the State's FY 1993 PWSS expenditures)</p>	<p>Yes</p>
<p>15% Local Assistance and Other State Programs (no more than 10% for any <i>one</i> of these eligible uses)</p> <p>1452(k)(2)</p>	<p>*provide loans to (community and nonprofit noncommunity) water systems to acquire land or conservation easements from willing sellers, or to (community water systems to) implement voluntary, incentive-based mechanisms for purposes of source water protection in areas delineated under section 1453, or for petition program activities under section 1454(a)(1)(B)(i)</p> <p>*provide assistance (including technical and financial assistance) to water systems as part of a state capacity development strategy under section 1420(c)</p> <p>*provide funding to assist in establishing and implementing wellhead protection programs under section 1428</p>	<p>None</p>	<p>No</p>

Activities related to State-wide or regional water supply planning or sustainable infrastructure are eligible for funding under both the 10% State Program and 15% Local Assistance set-asides through the State capacity development strategy for water systems. Much work related to the development and implementation of source water protection programs is also eligible in the capacity development context; as well as through the specific source water protection provisions of both these set-asides.

General Scope of Set-Asides to Promote Capacity Development

As you know, capacity development is an individual, state-based approach to ensure the technical, financial, and managerial capacity of water systems to comply with the SDWA and protect public health currently and in the future. Two recent Office of Water documents can help inform these inquiries:

(1) Used in conjunction with existing capacity development guidance¹, the ‘National Capacity Development Strategic Plan’² reiterates the central importance of capacity development within the SDWA’s overall framework as a means for the States systematically to

- assist water utilities in planning for and adapting to the effects of change on their infrastructure and water resources
- ensure their capacity to provide safe and affordable drinking water to their consumers
- develop an individualized, strategic approach to assist water systems in acquiring and maintaining the technical, financial, and managerial capacity necessary to ensure long-term achievement of the law’s public health protection objectives
- help ensure adequacy of source water, both quantity and quality, as an essential element of water systems’ technical capacity

(2) ‘Analysis on the Use of Drinking Water State Revolving Fund Set-Asides: Promoting Capacity Development’³

- includes extensive specific examples of States’ use of the DWSRF set-asides
- can serve as an information-sharing guide for States and Regions to advance their further evaluation of how best to deploy DWSRF resources to achieve SDWA public health protection objectives under each State’s circumstances.

On these bases, your Region’s DWSRF and Capacity Development staff can collaborate with states on the appropriate use of set-asides to promote compliance with the SDWA and to support water systems by keeping State capacity development strategies current.

¹ <http://www.epa.gov/safewater/smallsystems/pdfs/guidfin.pdf>

² http://www.epa.gov/safewater/smallsys/pdfs/report_smallsystems_capacitydevelopment_strategicplan.pdf

³ http://www.epa.gov/safewater/smallsys/pdfs/report_smallsystems_capacitydevelopment_dwsrfsetasideanalysis.pdf

Set-Aside Uses to Plan for Water Supply and Sustainable Infrastructure

States could use the 10% State Program set-aside to “develop and implement a capacity development strategy.” Eligible activities may include

- staff and expenses associated with State or sub-State area wide planning efforts to address current and future drinking water supply and drinking water source quality issues
- assessing the impacts of and planning for State or area wide water supply uncertainties, particularly shortages, that may affect basic adequacy of supply to protect public health
- developing and administering a sustainable infrastructure program on a statewide or area wide basis
- activities that directly benefit a State program or initiative, such as statewide or regional studies or planning efforts, or for the ongoing State implementation of its capacity development strategy

States could use the 15% Local Assistance set-aside for “technical and financial assistance to water systems as part of a State Capacity Development Strategy” to cover the costs of activities and services that directly benefit water systems individually, in groups, or generally. To be eligible for funding under this provision, activities must comply with these central and fundamental considerations: 1) activities must be clearly consistent with and generally reflected in a State’s Capacity Development Strategy; and 2) the objective of such activities must be to develop or enhance water systems’ ability to respond to current conditions and future changes with increasing self-sufficiency. If consistent with these fundamental considerations, eligible activities may include

- support for the technical, financial, and managerial capabilities of water systems
- work done by the water systems themselves, by State staff, or by third parties, so long as its clear function is to assist water systems directly
- a broad range of potential uses, covering any aspects of comprehensive, integrated water system planning and management that address the components of delivering a safe and affordable supply of drinking water, including work related to
 - water quantity
 - source water protection
 - infrastructure planning
 - system management
 - asset management
 - operational optimization
 - water rates
 - financial planning and management
 - contingency planning
 - workforce planning
 - emergency response planning
 - customer education and involvement

Set-Aside Uses for Source Water Protection

DWSRF set-asides offer considerable potential to support State source water protection programs, build capacity of individual utilities to carry out source water protection, and advance wellhead protection. The Drinking Water Protection Division in OGWDW will continue discussions with the Regions and States to identify existing examples of appropriate use of DWSRF set-asides to support source water protection efforts effectively.

In addition, the Clean Water State Revolving Fund (CWSRF) can finance a wide array of non-point source controls, and could serve an important role in enabling effective, sustained, programmatic implementation of drinking water source protection. The CWSRF staffs recent White Paper, 'The Clean Water State Revolving Fund Program: Tapping its Untapped Potential' outlines the broad scope of uses appropriate for and relevant to source water protection. This White Paper is currently being refined through workshops in the Regions that are important venues for dialogue on the breadth of potential CWSRF uses. I urge you to participate actively in such dialogues, and in partnership with your States, to consider closely the potential for CWSRF financing to advance the implementation of source water protection.

Limitations on Set-Aside Eligibilities

A key limitation on the use of the DWSRF set-asides is imposed by the DWSRF rule (at 35.3535(a)(2)): set-asides cannot be used for projects or project related costs eligible for assistance through the DWSRF loan Fund itself, or for projects or project related costs expressly prohibited from DWSRF loan Fund eligibility. One particularly important, specific limit is the ineligibility of monitoring, operation and maintenance expenses for loans or under the 10% State program set-asides, imposed by section 1452(a)(2). Expenditures under the 15% Local Assistance set-aside are not subject to the section 1452(a)(2) limitation just mentioned, but such expenditures must nonetheless be fully consistent with the specific purposes for which the set-aside is authorized.⁴

Relationship to Infrastructure Fund Eligibilities

While it may seem contradictory to have a broader scope of eligibility for some planning activities using set-aside funding than for infrastructure projects eligible for loan Fund assistance, this broader scope is based on valid distinctions. It simply reflects differences in purpose between the loan Fund, which Congress intended to address 'the need of many systems for funds simply to comply with the requirements of this Act' (House Rept. 104-632, p. 51), and the set-asides, which encompass planning and

⁴ For example, one authorized use of the 15% set aside is to provide assistance to water systems as part of a state capacity development strategy under section 1420(c) of the SDWA. Expenditures from this set aside for this purpose would need to be fully consistent with the terms of section 1420(c) and with the guidance referenced in footnote 1. See http://www.epa.gov/safewater/dwsrf/pdfs/memos/memo_dwsrf_policy_2003-09-04.pdf as an example of this point.

implementation of capacity development and source water (including wellhead) protection objectives, which are achieved through a much wider range of activities than just eligible infrastructure projects. Similarly, it is fundamental to cost-effective management to have DWSRF infrastructure projects proceed from consideration of capital and non-capital alternatives responding to particular system needs. DWSRF projects should be well-integrated into a framework of comprehensive resource and multiple barrier public health protection planning. This would not be possible if the scope of set-aside eligibilities was limited to that of infrastructure loan Fund eligibilities. However, to ensure that SDWA objectives are recognized and given proper priority in this broader planning, the State drinking water programs must have a significant continuing role and involvement in any broad planning or policy work funded by the set-asides.

Conclusion: Moving Forward Together

The DWSRF program is a central component of the Agency's strategic plan for ensuring safe drinking water in the United States. We are fully committed to collaborative, partnership-based management of this vitally important program. Please do not hesitate to call me directly at 202-564-3751; Chuck Job, the Infrastructure Branch Chief at 202-564-3941 or Peter Shanaghan, the DWSRF Team Leader at 202-564-3848 if you have questions or wish to discuss any aspect of the DWSRF Program.