



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF WATER

JUL 26 2019

### MEMORANDUM

**SUBJECT:** Expanded Source Water Protection-Related Eligibilities Under the Drinking Water State Revolving Fund's Local Assistance and Other State Programs Set-Aside

**FROM:** Jennifer L. McLain, Acting Director  
Office of Ground Water and Drinking Water

A handwritten signature in blue ink, appearing to read "Jennifer L. McLain", is positioned to the right of the "FROM:" field.

**TO:** Water Division Directors  
Regions 1 – 10

In the America's Water Infrastructure Act (AWIA) of 2018, Congress amended section 1452(k) of the Safe Drinking Water Act (SDWA) to expand source water protection-related eligibilities under the Drinking Water State Revolving Fund (DWSRF) program's 15 percent set-aside for local assistance and other state programs. This expansion reinforces the important role that source water protection plays in public health protection and in a water system's capacity to deliver safe and reliable drinking water. These changes became effective with the signing of the law on October 23, 2018.

Congress appropriated \$1.1 billion in new funding for the DWSRF in fiscal year (FY) 2018 and another \$1.1 billion in new funding in FY 2019; these annual amounts are nearly 35 percent higher than recent annual appropriations. In addition, Congress authorized \$1.3 billion in funding for FY 2020 and \$1.95 billion for FY 2021. These appropriations and authorizations signal strong interest and support for the DWSRF. This increase in funding expands funds available for set-aside use and gives states capacity to provide more loan agreements with communities to build, repair, and improve drinking water infrastructure.

These positive indications and the expansion of eligibilities under the local assistance set-aside provide an optimal opportunity to reassess how the DWSRF supports source water protection programs and activities in each region and state. To assist you and your staff in your conversations with states, I have attached a side-by-side analysis that reviews the existing eligibilities and highlights two important statutory additions:

- Updates to source water assessments are now eligible for funding.

- Expenditures under section 1452(k)(1)(D) may now go beyond wellhead protection programs to include the implementation of source water protection activities.

The EPA encourages states to consider the use of DWSRF set-aside funds to update their source water assessments and to develop source water protection plans and implement activities as part of their broader source water protection strategies. By including proper coordination with partners, these updated assessments and plans may be used to leverage other funding sources, such as the Clean Water State Revolving Fund, Clean Water Act section 319 funding, or conservation funds from the Natural Resources Conservation Service (NRCS), where appropriate.

Please reach out to state DWSRF and source water protection program managers in your region to ensure that they are aware of these expanded eligibilities under the local assistance set-aside. You are welcome to direct questions to Anita Thompkins, Drinking Water Protection Division Director, at [Thompkins.Anita@epa.gov](mailto:Thompkins.Anita@epa.gov).

Attachment



## **Implementation of the Drinking Water State Revolving Fund (DWSRF) Source Water Protection-Related Amendments in the America’s Water Infrastructure Act of 2018**

On October 23, 2018, the President signed the America’s Water Infrastructure Act (AWIA) of 2018 into law. Among its provisions are amendments to the Safe Drinking Water Act’s section 1452(k) (42 U.S.C. 300j-12) that provide for additional source water protection-related eligibilities in the DWSRF program. The analysis below assesses each subparagraph of the amended section 1452(k) and provides a plain language explanation, along with examples of eligible activities. Text in *italics* is new and text in ~~strike through~~ was deleted by Congress. The examples are not delineated in the legislation, but are included to serve as indications of typical activities that can be funded under this set-aside or as inspiration for creative applications of the funds. The examples are not meant to be an exhaustive list. See the DWSRF Eligibility Handbook for more examples.

Note: The DWSRF program regulations at 40 CFR Section 35.3580(b) require states to conduct environmental reviews of source water protection activities that are carried out using DWSRF set-aside funds unless the activities solely involve administration or technical assistance.

<b>Statutory Language</b>	<b>Plain Language</b>
<p><b><i>As amended, the SDWA section 1452(k) now states:</i></b>  <b>(k) Other authorized activities</b>  <b>(1) In general</b>  <b>Notwithstanding subsection (a)(2), a State may take each of the following actions:</b>            (A) Provide assistance, only in the form of a loan, to one or more of the following:                (i) Any public water system described in subsection (a)(2) to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.                (ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter.</p>	<p><b><i>Explanation:</i></b> Congress made no changes to this subparagraph. This subparagraph allows a state to provide loans to public or community water systems, according to the conditions listed, to support source water protection through land acquisition, voluntary, incentive-based measures, or as part of the state’s source water protection petition program. A state may offer principal forgiveness or negative interest rates for these loans using the Congressional additional subsidy authority; this would count towards any additional subsidization requirements and capped amounts. States may not use the SDWA 1452(d) disadvantaged community subsidy authority for these loans. The source water protection petition program was reauthorized by the AWIA.</p>

Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j–14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State ~~for fiscal years 1996 and 1997~~ to delineate, assess, and update assessments for source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

Examples: Purchase of land or arrangement of an easement to protect source water quality, including costs associated with acquisition such as appraisal and administrative costs; building fences that keep agricultural animals away from the water’s edge; sealing off abandoned groundwater wells and underground injection wells; public outreach and education.

Explanation: Congress made no changes to this subparagraph, which primarily authorizes capacity development-related activities.

Examples: If source water protection is part of the state’s capacity development plan, then source water protection training, plan development, and asset management could be eligible under this subparagraph.

Explanation: This subparagraph reauthorizes the funding of source water assessments, which had previously expired in fiscal year 1997. It also adds language to include updating assessments as an eligible expense. While there is no requirement to update source water assessments, this set-aside may be used to update assessments with new information and using new technology.

Examples: Updating and digitizing source water assessments using new GIS technology and data layers; incorporating newly recognized drinking water concerns, such as PFAS and cyanotoxins, into assessments.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h-7 of this title *and for the implementation of efforts (other than actions authorized under subparagraph (A)) to protect source water in areas delineated pursuant to section 300j-13 of this title.*

Explanation: This subparagraph authorizes the use of funds for implementation of source water protection efforts. Unlike subparagraph (1)(A), assistance under subparagraph (1)(D) is not in the form of a loan. Previously, expenditures under this subparagraph were restricted to establishment and implementation of wellhead protection programs. This statutory change broadens the types of activities eligible for funding with this set-aside. Additionally, unlike the loans in subparagraph (1)(A), this subparagraph does not limit the recipient of the expenditures to public or community water systems. The assistance must be applied to efforts that would protect source water within delineated source water protection areas. This section also states that expenditures may not be used for loans to public water systems for activities authorized under subparagraph (1)(A)(i) and similarly, expenditures may not be used for loans to community water systems for activities authorized under subparagraph (1)(A)(ii-iii).

Examples: Develop source water protection plans for groundwater or surface water systems; develop local source water protection ordinances and land purchasing plans and implementation of public outreach programs; develop a small grant program for source water protection measures; support integration across environmental programs that protect sources of drinking water; support best management practices within

**(2) Limitation**

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

- (A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).
- (B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).
- (C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).
- (D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).
- (E) To make expenditures to establish and implement wellhead protection programs, *and to implement efforts to protect source water*, pursuant to paragraph (1)(D).

source water protection areas, such as planting cover crops.

Explanation: This section explains that up to 15 percent of the capitalization grant may be used on activities authorized above. No more than 10 percent of the capitalization grant may be used for activities within each of the five categories listed (A through E). Congress modified this section to include implementation of source water protection efforts under (2)(E), consistent with paragraph (1)(D).

Examples: A state could spend 2 percent of its capitalization grant on providing source water protection trainings through a capacity development strategy (2)(C), 5 percent updating source water assessments (2)(D), and 8 percent on a small grant program for implementation of source water protection measures (2)(E).