

US EPA ARCHIVE DOCUMENT



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

MAR 12 2009

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Award of Water Quality Management Planning Grants with Funds Appropriated by P.L. 111-5, the "American Recovery and Reinvestment Act of 2009"

FROM: Suzanne Schwartz, Acting Director
Office of Wetlands, Oceans and Watersheds (4501T)

TO: Water Management Division Directors
Regions I – X

I. INTRODUCTION

This memorandum provides information, guidelines, and answers to frequently asked questions (FAQs) on how the U.S. Environmental Protection Agency (EPA) will award and administer Water Quality Management Planning (WQMP) Grants appropriated to the State and Tribal Assistance Grants (STAG) account in P.L. 111-5, the "American Recovery and Reinvestment Act of 2009" (ARRA). WQMP grants are awarded under Section 205(j)(2) of the Clean Water Act (CWA), using funds reserved in Section 604(b), and are commonly referred to as "604(b) funds."

On February 17, 2009, President Barack Obama signed the ARRA into law. The ARRA contains funding for numerous federal programs, including several environmental programs administered by EPA. Most notably, the ARRA provides \$4 billion for the Clean Water State Revolving Fund (CWSRF) and \$2 billion for the Drinking Water State Revolving Fund (DWSRF). (The Office of Water has published information on the use of ARRA funds for the CWSRF and DWSRF programs; see <http://epa.gov/water/eparecovery/>.)

Section 604(b) of the CWA provides for the reservation each fiscal year of 1% of each State's CWSRF allotment (or \$100,000, if that is greater) "to carry out planning" under Sections 205(j) and 303(e) of the CWA. The total nationwide allotment of funds reserved in Section 604(b) in the ARRA is \$39,301,827. The specific State-by-State allocations are set forth in Attachment 2 to this memorandum. Funds will remain available for obligation until September 30, 2010.

Specific requirements governing the award of the 604(b) funds appropriated under the ARRA are described in this memorandum. In addition, OMB has provided initial guidance on implementation of the ARRA at:
http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf.

Nothing in this document is meant to conflict with or supersede the OMB guidance. Additional guidance on 604(b) funds may be forthcoming, as more detailed information becomes available from OMB.

To quickly review some of the most relevant source documents regarding both the CWSRF and 604(b) in the context of the ARRA, see the attachments 3-5 at the end of this document.

II. GENERAL BACKGROUND

A. CWSRF Funding Under the ARRA

Funding is available to each State CWSRF for the 3 purposes under Section 603(c) of the CWA:

The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of [the CWA]), (2) for the implementation of a management program established under Section 319 of [the CWA], and (3) for the development and implementation of a conservation and management plan under section 320 of [the CWA].

These 3 purposes form the eligibility criteria for all CWSRF loans under ARRA. In addition, the ARRA focuses 20% of the CWSRF (\$4 billion), as well as of the DWSRF funds (\$2 billion), totaling of \$1.2 billion dollars, on the following subset of projects:

“[T]o the extent that there are sufficient eligible project applications, not less than 20 percent of the funds appropriated herein for the Revolving Funds shall be for projects to address **green infrastructure, water or energy efficiency improvements or other environmentally innovative activities....**” (emphasis added).

Significantly, Congress has never before designated these categories for special funding priority under the SRF. To assist States in identifying projects that address designated activities, EPA has prepared a list of “CWSRF Project Definitions and Examples for Green Infrastructure Reserve,” which is contained in Attachment 6 to this memorandum.

B. Funds Reserved in Section 604(b) Under the ARRA

As required by Section 604(b), each State is to receive approximately 1% of their CWSRF grant amount “to carry out planning under sections 205(j) and 303(e) of the” CWA. The exact amount provided to each State is listed in Attachment 2 to this memorandum.

Under Section 205(j)(3), each State must allocate at least 40% of its 205(j) grant to “regional public comprehensive planning organizations” (RPCPOs) and “appropriate interstate organizations.” However:

“In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the [EPA] Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this chapter, the allocation to such organization may be less than 40% of such amount.”

Sections 205(j) and 303(e), set forth in Attachments 3 and 4, list a broad range of planning activities that may be funded from the Section 604(b) reserve. Indeed, States and regional public comprehensive planning organizations traditionally have used Section 604(b) funds for a wide variety of planning activities.

While the full historical range of Section 205(j) and 303(e) activities continue to be eligible under the ARRA, it is important to note that Congress has now created a special new category of priority activities for CWSRF and DWSRF that has implications for States’ 604(b) planning priorities as well. As noted above, Congress created a 20% set-aside in both SRFs for projects that address **green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.**

Successfully identifying and prioritizing projects that fall within these specified categories presents a unique challenge and opportunity for State water planning efforts. The 20% set-aside reflects the high level of importance that Congress places on these categories for attention and funding. However, to date, many States have not yet conducted detailed assessments or developed plans on a State-wide or regional basis that focus upon these designated categories. This may make it difficult for States to identify eligible projects and understand the relative benefits of the many projects that will be considered for funding.

Therefore, EPA strongly encourages States to use Section 604(b) funds under the ARRA to conduct appropriate planning activities with regard to green infrastructure, water or energy improvements, and other environmentally innovative activities. Here are three examples of the type of planning efforts that could help States successfully use SRF funds to implement the specific types of projects included within the ARRA’s CWSRF and DWSRF 20% set-asides:

Example 1 (Green Infrastructure): The State or regional planning organization develops a green infrastructure plan for a watershed which identifies healthy sub-watersheds of high ecological integrity worthy of conservation and protection as well as sub-watersheds with impaired waters in need of restoration; threats to the ecological integrity of these watersheds; and the protection, mitigation, and restoration projects (e.g., in wetlands, coastal, source waters, riparian areas, and other important aquatic habitats) and low impact development practices that are needed to protect water quality.

Example 2 (Water Efficiency): The State conducts an analysis that documents current uses of water (by sector) across the State and develops a plan based on that analysis. The analysis considers historical, current, and projected trends of both water availability and use; conservation techniques that may be used; and anticipated savings for various sectors and in total. The plan identifies the water use reductions that will be needed to conserve water for drinking water availability and other consumptive uses as well as to preserve ecological flows for fishing, swimming, and aquatic habitat.

Example 3 (Environmentally Innovative Activity -- Climate Change Adaptation): The State works with local, regional and interstate organizations to assess the expected impacts of climate change on the health of aquatic ecosystems in the State and the vulnerability of clean water infrastructure and develops response plans, that include specific immediate, short-term actions to adapt to climate change, based on this information. This assessment and planning work could include cooperation with interstate organizations and coordination on an interstate basis.

EPA notes that States are not required by ARRA to dedicate 604(b) funds to those categories of activities that are eligible for the 20% SRF set-aside. EPA also recognizes that States will be identifying and beginning implementation of ARRA projects expeditiously, so that results of some planning activities begun at this time may not be available to help select and design ARRA projects. Nonetheless, these set-aside categories of projects represent a new direction which Congress (supported by many States, local governments, and non-governmental organizations) has demonstrated a desire to promote, and plans conducted with the ARRA's 604(b) funds will help enormously in promoting the selection and implementation of such projects in the future.

EPA also notes the need to assure that all communities can have access to the funds in order to help achieve the broad ARRA objectives of creating jobs, promoting economic recovery, and assisting those most impacted by the recession. Therefore, States should strive to assure that 604(b) funds, including those that are passed through to RPCPOs and interstate organizations, fairly address planning needs across the state, including traditionally under-represented and disadvantaged communities.

C. Compliance, Reporting and Inspector General Review

It is reasonable to anticipate that EPA, States, and regional public comprehensive planning organizations will be subject to new scrutiny with respect to the timelines and requirements for performance and for reporting in the Recovery Act. Significant funding (\$20 million) is directed towards EPA's Office of Inspector General (OIG) so that they can provide oversight and audit of these programs. In addition to providing funding to the OIG, the ARRA provides \$25 million to the Government Accountability Office to support its government-wide oversight activities relating to the ARRA.

The ARRA also creates a new Recovery Accountability and Transparency Board, to coordinate and conduct oversight of covered funds to prevent fraud, waste, and abuse. Its members, other

than the chairperson, are Inspectors General of various agencies. In addition to traditional oversight responsibilities, the Board is directed to create a Web site on which all required reports will be posted. Reporting requirements for grant recipients – States, in the case of Section 604(b) – are discussed in Section IV below.

III. APPLICATION REQUIREMENTS

To enable States to meet statutory deadlines while ensuring adequate time to address the new ARRA requirements as well as relevant continuing legal requirements, EPA recommends that States submit grant applications as soon as possible after appropriated funds become available for obligation. EPA's goal is to award ARRA grants no later than 30 days after a complete application is received. Applications under the ARRA should be submitted as separate grant applications as there are unique requirements that attach to these funds.

In general, the same regulations, processes and forms that are used to apply for past 604(b) funds generally will be used by States to apply for 604(b) funds that have been appropriated under ARRA. In addition, as required by Section 1607(a) of the ARRA:

“Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act; and (2) the funds will be used to create jobs and promote economic growth.”

Each State shall include a copy of this certification from the Governor with the grant application.

Second, as explained on page 3, under certain conditions States may allocate less than 40% of their WQMP grant to RPCPOs and interstate organizations. States seeking a waiver with respect to ARRA 604(b) funds must submit specific separate requests for such approval in addition to any request submitted for approval with respect to standard FY09 604(b) funds. Waiver requests from previous years or from normal FY 09-appropriated 604(b) funds will not apply to ARRA funds.

EPA notes that currently, approximately 20 States annually request that EPA waive pass-through of 40% of the 604(b) funds to RPCPO/IOs. Governors seeking such approval with respect to the 604(b) funds appropriated in the ARRA will need to consult with eligible organizations and assure that the statutory predicates are met. EPA strongly encourages any Governors seeking a waiver under ARRA to document:

- (1) efforts made to contact and consult with eligible organizations, and
- (2) the specific factual basis underlying a determination that allocation of funds to such organizations will not result in significant participation in water quality management planning and not significantly assist in the development and implementation of the State's water quality management plan.

EPA Regional Project Officers will be required to input grants information into EPA's Integrated Grants Management System ("IGMS") using a Funding Recommendation (FR) template specifically developed for 604(b) funds under the ARRA. Guidelines to explain how to use this FR template will be distributed to EPA Regional Project Officers. Using this FR template is especially important because new codes have been created to track the activities funded under the ARRA. First, there is a new grant Program Code: "2P-- ARRA Water Quality Management Planning (Sections 205(j)(1) & 604 (b))." There is also a new specific PRC code to track the ARRA WQMP funds, which is 202B80ECB. The "CB" suffix is critical for distinguishing the ARRA 604(b) funds from other 604(b) funds. The PRC code 202B80ECB must be included in all ARRA WQMP Grant funding obligations, expenditures, and other transactions in EPA's financial systems. The ARRA requires that all funds appropriated under the ARRA be established in separate Treasury accounts, and that these funds must be tracked separately from other 604(b) funds, even if they contribute to the same project.

The following section discusses reporting requirements including, under Section 1512(c), the name and description of each project for which recovery funds were expended or obligated. States' 604(b) applications must include such project descriptions. This will facilitate their inclusion in subsequent reports and also enable EPA to provide information at the earliest possible time to be able to report how the States are using or planning to use the recovery funds. Project descriptions should be at the level of detail provided in the three examples provided in Section II.B above.

IV. AWARD REQUIREMENTS

A. Types of Awards

In order to commence expenditures and activities as quickly as possible, the regional Grants Management Offices have the flexibility to award full, partial, or conditional grants. EPA Regional Project Officers and States may utilize these award options as long as the application requirements are consistent with the guidance issued by the Office of Grants and Debarment.

1. Full Award. This option should be used when the applicant is able to submit a complete workplan and all other application requirements have been met.

2. Partial Award. This option should be used when the applicant submits a partially complete workplan containing activities/projects that can be timely initiated and all other application requirements have been met. Partial awards must include a condition requiring the submission of the remainder of the workplan within a specified period of time.

3. Conditional Award. This option should be used when the applicant has the basic skeleton of a workplan, but needs additional time to develop a full workplan and all other application requirements have been met. Conditional awards must contain two conditions: 1) a condition requiring the applicant to submit a full workplan within a specified period of time; and 2) a condition prohibiting the recipient from drawing down grant funds until the full workplan is submitted and approved. Prior to award, GMOs will need to verify with the Las

Vegas Finance Center that the necessary draw-down limitations are in place to enforce the second condition.

B. Grant Conditions

The ARRA includes a number of new cross-cutting requirements that will apply to projects funded in part or in whole with funds made available by ARRA. Grant terms and conditions will be provided at a later date.

1. Continuing Requirements

All requirements promulgated through guidance or regulations issued by EPA for the implementation of the WQMP Grant Program will remain in effect unless such requirements are inconsistent with the statutory requirements of the ARRA, conditions of the grant, or the requirements contained in this document.

2. New Requirements on Prevailing Wages

Section 1606 of the ARRA contains the following language:

“Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C.App.) and section 3145 of title 40, United States Code.”

The purpose of this language is to apply Davis-Bacon Act wage rules to all assistance agreements made in whole or in part with funds appropriated under the ARRA. The Department of Labor provides all pertinent information related to compliance with labor standards, including prevailing wage rates and instructions for reporting.

3. Reporting Requirements

i. Quarterly Reports

Section 1512(c) of the ARRA requires each State to submit reports to EPA not later than 10 days at the end of each calendar quarter that contain:

- (1) the total amount of recovery funds received from EPA;

(2) the amount of recovery funds received that were expended or obligated to projects or activities; and

(3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including:

(A) the name of the project or activity;

(B) a description of the project or activity;

(C) an evaluation of the completion status of the project or activity;

(D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment¹.

(4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (P.L. 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of OMB.

Recipients will be required to abide by these reporting requirements under the terms and conditions of the grant.

ii. Monthly and Weekly Reports

Under the OMB guidance (http://www.whitehouse.gov/omb/recovery_default/), agencies will be required to report no less than monthly on the uses of funds provided by the ARRA. The current OMB guidance states that, "Agencies will submit obligations and expenditures by TAFS, vendor, contact/grant/loan number, program, and other data elements...Further information, including the format and instructions for monthly reports, will be included in future Guidance." Furthermore, all agencies are required to report the following on a weekly basis:

- By Treasury Account, total appropriations, total obligations, and total expenditures as recorded in agency financial systems on a cumulative basis; and

¹ Although 604(b) funds may be regarded as not being "infrastructure investments", EPA nonetheless is requiring that States include in their reports the purpose, total cost, and rationale of the agency for funding the investment. This will assure that Congress and the public can clearly understand the important role played by WQMP grants in supporting ARRA objectives.

- A short bulleted list of the major actions taken to date and major planned actions. “Major” actions include those of likely interest to senior government officials, Congress, and the public.

EPA will compile these data on a weekly basis, as required by OMB, for publication at recovery.gov.

Further information on the format and instructions for these reports will be forthcoming from OMB. EPA anticipates that the majority of information requested in the weekly and monthly reports will be drawn from our existing centralized financial and grant databases. However, in order for EPA’s weekly reports to reflect the most current activity, States will need to notify EPA of any new projects initiated or completed, or subgrants awarded, within the week that these activities occur.

iii. Systems for Reporting

In order to meet the reporting requirements, recipients of ARRA-funded WQMP grants will need to provide information to EPA beyond the typical semi-annual reporting that is performed for regular grant activities. Recipients will need to provide more specific information, more often, and in a format that enables EPA to aggregate and quantify the results for reporting at regional and national scales. EPA will develop a system for collecting these data from recipients. We will soon provide to the Regions a list of the specific data elements that will be collected.

4. Cash Draws

Due to requirements for expedited spending of ARRA funds and increased oversight, EPA requires that all cash draws for projects funded with ARRA funds be drawn from the grant award made available by the ARRA in proportion to the ARRA funding in the overall assistance agreement. In other words, projects funded by the ARRA should not expend funds from other open grants, and projects funded in part by the ARRA should expend funds from other open grants only to the extent and proportion to which other grants are identified as a source of partial funding towards the project.

5. Limit on Funds

Section 1604 of the ARRA prohibits the use of funds for particular activities: “None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.”

Furthermore, the Joint Explanatory Statement in Conference Report 111-16 states, “Section 1604 prohibits the use of funds for particular activities.” This section clearly prohibits particular activities, but does not prohibit the use of funds from having secondary effects that may impact any of the listed prohibited uses. For instance, a State is not prohibited from funding a treatment plant that may have a casino or golf course as a customer. However, a State

may not provide funding to a casino to construct an on-site treatment plant.

V. DEADLINES AND PROCESSES

A. Deadline for Commitment of Funds

In order to meet the requirements of the ARRA, all funds must be committed to eligible projects and each State must provide a signed certification that contracts have been signed or projects are under construction in an amount equal to the full value of the ARRA assistance agreement by February 17, 2010.

The ARRA contains the following:

“Provided further, That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) that are not under contract or construction within 12 months of the date of enactment of this Act.”

Thus all funds must be “under contract or construction” by February 17, 2010 (12 months from the date of enactment of ARRA).

The purpose of this language is to expedite implementation of the ARRA and thereby help achieve the primary objectives of the ARRA:

- “To preserve and create jobs and promote economic recovery;
- “To assist those most impacted by the recession;
- “To provide investments needed to increase economic efficiency by spurring technological advances in science and health;
- “To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and
- “To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.”

In the context of Section 604(b) funds, which do not fund infrastructure construction, EPA will accept, as evidence that a State has met this requirement, a signed certification that contracts have been signed or projects have begun implementation (i.e., funds have been expended to implement the project), and that funding has been committed in an amount equal to the full value of the ARRA assistance agreement. For example, with respect to planning work conducted by State employees with ARRA 604(b) funds, the State should list the employee time and the dollar amount (e.g., “3 State employees have been assigned to work half time on this planning project for one year, for a total of 1 ½ FTEs and a total of XXX thousand dollars”) in the certification statement. Each State must certify in writing, and forward to EPA, not later than March 1, 2010,

that projects funded with ARRA 604(b) funds have met the February 17, 2010 deadline for commitment of funds.

Based on the deadline for commitment of funds outlined above, States are advised to include appropriate conditions, that may include termination, in their contracts and/or sub-grants with RPCPOs/IOs receiving pass-through funds. If the State fails to meet the 12 month deadline in the ARRA, EPA must deobligate the funds from the State. Therefore, it is imperative that States have complementary protective provisions in their agreements with subgrantees.

Furthermore, EPA strongly encourages, consistent with the legislative purposes enumerated above, that States expedite their expenditures of ARRA 604(b) funds. Although this provision provides States up to 12 months to sign contracts or begin construction, the nature of most 604(b)-funded activities is such that they require much less time to place under contract than the complex construction of infrastructure projects. Therefore, whenever possible, we recommend that States strive to achieve the goals of this section within 6 months rather than the full 12 months allowed by this provision.

In addition, ARRA section 1602 requires that “recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after … enactment” of the Act. States should implement this preference requirement by selecting for ARRA funding those projects that, as far as it’s possible to determine, appear most likely to be able to start by June 17, 2009.

B. Deobligation and Reallotment of Funds

The ARRA requires the Administrator to reallocate any funds that do not meet the required 12-month commitment of funds deadline discussed in the previous section. In order to implement this provision, EPA will immediately deobligate funds from awarded grants that have not been committed by February 17, 2010. EPA will rely on required reporting to determine if funds are not committed to contracts. All reporting on contracts must be complete no later than March 1, 2010. Reallotment will proceed as described below.

In the event that funds appropriated by the ARRA are deobligated, the funds will be reallocated on the basis of the same ratio as was applicable to the initial allotment of funds, in Section CWA §205(c). None of the funds reallocated shall be made available to any State which was subject to reallocation. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this appropriation. Furthermore, in order to participate in the reallocation of funds, a State must certify through an amendment to its workplan, that any additional funds will be under contract within 120 days of reallocation. A State will only be eligible for reallocation for an amount equal to the total value of projects that are certified as ready to proceed in the amended workplan, but no more than an amount determined by the allotment formula. The amendment to the workplan must contain a

list of projects ready to receive binding commitments within 120 days of reallocation as well as the certification that these funds will be under contract within 120 days.

In order to effectively ascertain those States that will be able to participate in a potential reallocation, States are urged to begin identifying additional projects that will be ready to proceed within 120 days after February 17, 2010, as soon as possible. If EPA determines that reallocation is likely at the end of the 1-year period, EPA will request that all States submit a certified list of projects that will ready to proceed within 120 days after February 17, 2010. The certified lists submitted by the States will be used to determine participation in a reallocation of funds.

VI. EPA REGIONAL ACTIONS

If you have not already done so, you and your staff should initiate discussions with the States to ensure proper planning is taking place to implement the ARRA. Additionally, the States should be provided with a copy of this memorandum prior to grant award to ensure that the applicant is on notice of the applicable requirements before the grant is awarded.

If you have any questions concerning the contents of this memorandum, you may contact me, or have your staff contact Dov Weitman, Chief, Nonpoint Source Control Branch, Office of Wetlands, Oceans, and Watersheds, at (202) 566-1207, or Santina Wortman, Nonpoint Source Control Branch, at (202) 566-2537.

Attachments

ATTACHMENT 1

Frequently Asked Questions (FAQ) About the Funds Reserved in 604(b) Under the ARRA

1. What is the amount of available funding for each State?

Answer: Attached to this memorandum is a table that shows the amount of 604(b) funds available for each State. It was derived as follows: Section 604(b) requires EPA to reserve each year for each State 1% of its share of Title II funds or \$100,000, whichever is greater, “to carry out planning under Sections 205(j) and 303(e)” of the CWA. The 1% share is determined by the formula set forth in Section 205(c)(3) in the CWA. The percentages in that table are used to determine the SRF allocation of each State, and then one percent of each State’s allocation is reserved under Section 604(b) for planning activities under Sections 205(j) and 303(e).

2. What is the submittal deadline for the State's workplan to USEPA?

Answer:

ARRA does not contain a deadline for submitting a workplan. However, to enable States to meet the 12-month statutory deadline for commitment of funds as well as to achieve the goals of ARRA, EPA recommends that States submit grant applications as soon as possible after appropriated funds become available for obligation.

As discussed in Section V.A. of this memorandum, EPA believes that in most cases it should be possible for States to commit their funds within 6 months. In addition, ARRA section 1602 requires that “recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after … enactment” of the Act. States should implement this preference requirement by selecting for ARRA funding those projects that, as far as it’s possible to determine, appear most likely to be able to start by June 17, 2009.

Consistent with these requirements, EPA encourages States to submit their grant applications as soon as possible after appropriated funds become available for obligation. EPA strongly encourages the States to begin working with their regional contacts on workplan development and the grant application process. EPA in turn will strive to grant the award within 30 days of the date of application.

3. Will States still receive 604(b) funds under a final 2009 Budget?

Answer: EPA anticipates that Congress will separately appropriate funds for the CWSRF program, including the Section 604(b) allocation, when the 2009 budget is passed. States will have to apply for those regular annual 604(b) funds in a separate grant application process. EPA will provide direction to States when this budget is approved.

4. a) How can 604(b) funds be used?

Answer: Section 604(b) states that all of the 604(b) funds are to be used “to carry out planning under Section 205(j) and 303(e)” of the Clean Water Act. These sections refer to a range of water quality planning activities, including both nonpoint sources and point sources. States traditionally have used Section 604(b) for a broad range of planning activities, and they may continue to do so.

States should note the special emphasis placed in the SRF requirements of ARRA upon funding projects that address **green infrastructure, water or energy efficiency improvements or other environmentally innovative activities**. These project areas will receive 20% of the CWSRF and DWSRF funds. Many States, however, have not conducted a significant amount of planning in those subject areas. Planning activities that focus on these areas will help enormously in promoting the selection and implementation of sound projects. EPA encourages States to use 604(b) funds to conduct such planning activities.

Please note that eligible State planning activities do not include program implementation (i.e., permit writing and inspections) or water restoration activities (i.e., nonpoint source stream restoration); however, Section 106 and 319 funds are available to be used for those purposes. A complete list of activities eligible for funding under Section 604(b) are set forth in Section 205(j)(2) and 303(e). These are set forth in Attachments 3 and 4 to this memorandum. Also note that Section 1604 of the ARRA prohibits the use of funds for particular activities (see FAQ #5 below).

Other acceptable uses of State 604(b) funds include salaries, contracts, equipment, and travel that are associated with the planning activities set forth in Section 205(j)(2) and 303(e). Part 31 sets forth the uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments. These rules apply to 604(b) funds. However, as a matter of policy, because 604(b) funds are required to “carry out planning”, any State expenditure for equipment should be minimal and directly related to conducting a particular planning activity being funded with 604(b) funds.

4. b) May States use the Section 604(b) funds to fund watershed project coordinators?

Answer: States may use Section 604(b) funds for planning but not for implementation. They may be used to fund that portion of a watershed coordinator’s work that consists of planning, e.g. watershed monitoring and developing a watershed plan. They may not be used to fund activities that assist in the implementation of the project.

5. a) Are there any other requirements/restrictions on use of the funds under the ARRA authorization?

Answer: Section 1604 of the ARRA prohibits the use of funds for particular activities: “None of the funds appropriated or otherwise made available in this Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.”

5. b) How does “shovel ready” apply to 604(b) planning projects?

Answer: The concept of “shovel ready”, meaning that a project is ready to proceed, applies to planning projects in that it expresses a preference for such projects in order to meet the timelines for committing ARRA funds and the purpose of expending funds rapidly to promote economic recovery. Under the requirements of the ARRA, all funds must be committed to eligible projects within 12 months of the date of enactment.

5. c) Is this funding to be targeted on immediate jobs creation versus longer term benefits?

Answer: The ARRA lists the following five purposes of the Act:

“(1) To preserve and create jobs and promote economic recovery.

“(2) To assist those most impacted by the recession.

“(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.

“(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

“(5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.”

It is evident from this language, other provisions cited in response to Question 1 and the entire well-publicized background of the ARRA, that rapid jobs-creation is the number one goal of the ARRA and that it must be achieved with respect to 604(b) funding as well as for all other funding under the Act.

However, it is evident from the fourth purpose identified above, that “environmental protection” is also a goal of the ARRA. Therefore, within the constraint of the need for expeditious implementation, it remains incumbent upon states to maximize investment of 604(b) funds in activities that are particularly effective in providing “environmental protection” and, as stated, “will provide long-term economic benefits”. Thus States should focus on planning activities that will maximize environmental benefits in the long term.

6. Can the level of information needed in State work plans be streamlined? Can grants be awarded conditioned upon State submission of project workplan before issuance of a sub-grant?

Answer: The ARRA does not provide to EPA any authority to waive any regulatory requirements for awarding these grants. Moreover, the reporting requirements of the ARRA indicate Congress’ concern that the level of information in State work plans be adequate to enable the public to become aware of the purpose of each grant.

However, EPA recognizes the need for EPA and States to work cooperatively to expedite the process of awarding and implementing 604(b) funds. EPA recommends that States submit grant applications as soon as possible after appropriated funds become available for obligation. EPA in turn will strive to grant the award within 30 days of receipt of the application. Once those funds have been awarded to the States, States may use various processes, including competitive and direct contract awards, to select projects. Where States intend to use these approaches, EPA will award the grants with a condition stating that the State will submit a project workplan prior to issuing a sub-grant or contract.

7. Can the 40% pass through be optional for these funds?

Answer: The 40% pass-through requirement is specifically required by Section 205(j)(3) of the CWA, which states:

"In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and shall give funding priority to such entities and designated or undesignated public comprehensive planning organization to carry out the purposes of this subsection. In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations and appropriate interstate organizations for the development and implementation of the plan described in this paragraph."

EPA and the States lack the legal authority to contravene the express requirements of the CWA. However, Section 205(j)(3), the Section that creates the 40% pass-through requirement, does provide the following exception:

"In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in the development and implementation of the plan described in this paragraph and achieving the goals of this chapter, the allocation to such organization may be less than 40 percent of such amount."

EPA notes that approximately 20 States currently use this authority to annually request that EPA waive pass-through of 40% of the 604(b) funds to such organizations. Governors seeking such approval with respect to the 604(b) funds appropriated in the ARRA will need to consult with eligible organizations and assure that the statutory predicates are met. EPA strongly encourages any Governors seeking a waiver under ARRA to document (1) efforts made to contact and consult with eligible organizations, and (2) the specific factual basis underlying a determination that allocation of funds to such organizations will not result in significant participation in water quality management planning and not significantly assist in the development and implementation of the State's water quality management plan.

States seeking a waiver with respect to ARRA 604(b) funds should submit a specific separate request for such approval as part of the workplan in addition to any request submitted for approval with respect to standard FY09 604(b) funds. Waiver requests from previous years or from normal FY 09-appropriated 604(b) funds will not apply to ARRA funds.

8. If EPA has during FY 09 approved a Governor's request to waive the requirement to pass through at least 40% of the 604(b) funds to regional public comprehensive planning organizations, and if the Governor wishes to waive it again with respect to ARRA funds, is a new request required?

Answer: Yes. The total amount of funding being provided to the State will have increased so substantially that the Governor's original basis for the request may no longer be valid. In seeking such waivers, Governors consult with eligible organizations to determine whether the allocation of at least 40 percent will not result in significant participation by regional public comprehensive planning organizations in water quality management planning and not significantly assist in development and implementation of the State's water quality plan. With a significant increase in 604(b) funds, that determination may no longer be valid.

9. Regarding pass through to Interstate Organizations (IO), who is eligible and are there any limitations on tasks? Can the States use 604(b) funds as the State's contribution to an IOs annual budget?

Answer: Section 205(j)(3) requires that at least 40% of the amount awarded under Section 205(j)(2) shall be allocated to "regional public comprehensive planning organizations in such state and **appropriate interstate organizations**" to develop and implement the State's water quality management plan. This bolded term is not defined in the CWA. Rather, Section 502(2) of the CWA defines the term "interstate agency" as follows:

"The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator."

This language applies to interstate agencies such as the New England Interstate Water Pollution Control Commission and the Ohio River Valley Water Sanitation Commission and to other interstate organizations that receive grant funds under section 106 of the CWA. In addition, interstate organizations that can develop comprehensive plans for, or have other substantial powers or duties to address, interstate waterbodies (e.g., the Great Lakes, Chesapeake Bay, the Gulf of Mexico, Lake Champlain, and multi-State estuary programs established under the National Estuary Program under Section 320 of the CWA) are eligible to receive 604(b) funds as "appropriate interstate organizations", and the provision of funds to these entities contributes to a State's meeting its obligation to provide at least 40% of its 604(b) allocation to RPCPOs or appropriate interstate organizations.

Interstate organizations, like regional public comprehensive planning organizations (RPCPO), may use Section 604(b) funds to perform any of the activities set forth in Section 205(j).

10. May States direct 604(b) funds back to infrastructure funding in the event they are unable to fully spend those monies on planning?

Answer: No. Section 604(b) requires that States “shall reserve” 1 percent of their allotment “to carry out planning” under Sections 205(j) and 303(e). This is a mandatory requirement. EPA suggests that States accept this provision as an opportunity to consider their greatest planning needs and address them. Every State has significant planning needs including:

- determine how best to address the reservation of SRF funds for “green infrastructure”;
- address nutrient impairments on a watershed scale that are caused by a set of POTWs and agricultural operations;
- protect undeveloped areas through green infrastructure techniques while also creating low impact development programs that will protect water quality in developing areas;
- address and adapt to the impacts of climate change on water quality;
- identify and prioritize projects to protect and restore critical wetlands and coastal areas;
- plan new programs to improve water efficiency to improve aquatic habitats; or
- develop watershed plans and total maximum daily loads.

Section 604(b) funds can help States plan to meet these critical needs. In particular, the ARRA’s set-aside of 20 percent of SRF funds for green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities heightens the importance of assuring that adequate planning is conducted with respect to these activities.

11. How can USEPA help States leverage other Federal planning funds (i.e. CWA - 319 watershed plans, and SDWA - source water protection plans)?

Answer:

States are already empowered to leverage their various Federal planning funds to a very significant degree to assist them in conducting planning activities under Section 604(b). For example, EPA provides significant funds to States to develop watershed-based plans that can then be used both to implement TMDLs and to protect unimpaired waters in those watersheds. Similarly, Section 319 funds may and have been used to support green infrastructure planning. EPA encourages States to use these funds as well as 604(b) funds, Section 106 funds, Section 320 National Estuary Funds, and other Federal funds that are available to comprehensively plan solutions to the problems and threats being experienced in these watersheds.

EPA notes that in addition to leveraging EPA and other Federal programs in planning efforts, there are also many State and non-governmental organizations with great technical expertise, tools, and/or resources that can assist and would happily participate in efforts to better define and plan to address threats to aquatic environments from development, invasive species, agriculture, population growth, and other sources. EPA would be pleased to work with individual states in their planning efforts to help them link up with other organizations that can help them.

12. How can eligible activities be expanded to reflect newer aspects of State programs essential to quality planning e.g., construction site inspections (including facilities funded

by the ARRA), assessments of BMP performance, development of new or improved BMPs, and development of watershed data systems?

Answer: States may use Section 604(b) funds only for planning. Where such activities as those listed are part of a planning effort (e.g., development of a watershed data system that will be used to plan various point and nonpoint source remediation activities in a watershed), they may be funded with Section 604(b) funds. When they are primarily implementation efforts, such inspections and enforcement, they would not be eligible under Section 604(b). In any event, it should be emphasized that, in other sections of the CWA, Congress provides significant Federal funds for States and others to support many of the activities mentioned in the question. These include grants under Sections 106 and 319, which are often used to assess BMP performance, develop/demonstrate new or improved BMPs, and inspect construction sites.

13. How can USEPA support adaptation to and mitigation of climate change with 604(b) funds and help avoid duplication?

Answer: Planning activities that support the water quality-related aspects of adaptation to climate change are eligible activities for Section 604(b) funds. Projected changes in water temperature, precipitation, storm intensity and frequency, stream flow, and sea levels are important planning considerations. EPA advocates adaptation planning to address these effects, e.g., for protection of critical habitat, water infrastructure facilities, and strengthening the resiliency of aquatic ecosystems on a watershed basis. A broad analysis of how to avoid duplication with other planning efforts regarding climate change is outside the scope of this Q&A document. However, we note that the National Water Program has recently published a national strategy for adaptation to climate change (see EPA's website, <http://www.epa.gov/water/climatechange/index.html>).

14. Can States use 604(b) funds for facility plan updates, plans to address collection system issues, and local municipal water quantity planning related to climate change?

Answer: No, these funds may not be used for facility-specific plan updates or to address facility-specific collection system issues for two reasons. First, Section 603(c) specifies that "construction of POTWs (as defined in section 212 . . .)" is eligible for SRF funding, and section 212 in turn defines construction to include all the planning involved in building the facility. While Section 205(j)(2) says that it includes, but is not limited to, the examples in A-D, the language does not in the Agency's view cross the line to facility planning that is conducted as part of the construction process. Thus, water quality management planning is funded under 604(b)/205(j) and facility planning is funded with other SRF funding. Second, the framework of the law doesn't support allowing the planning set-aside to be used for facility specific purposes

State and local municipal water quality planning related to climate change is fundable under 604(b) (see previous question), but EPA recommends that such planning be conducted first on a regional and watershed basis to be more robust, reliable, and ultimately useful.

15. Are there any new expectations with respect to deliverables, outputs, and reporting

requirements?

Answer: The expectations with respect to deliverables, outputs, and reporting requirements are generally discussed in sections III-V of this memorandum.

16. Must EPA and States use a grants vehicle for 604(b), or may they enter into a cooperative agreement instead?

Answer: EPA may award 604(b) funds to a State using either a grant or a cooperative agreement vehicle. In all cases, the goal should be to promote efficient expenditure rates and effective implementation.

17. May EPA continue a previous grant of funds reserved under 604(b) by adding additional ARRA funds to the same grant?

Answer: No. OMB's guidance states that "supplements to existing agreements are not recommended as there is a greater risk that the grant recipient will be unable to track and report ARRA funds separately." Because the ARRA requires that all funds appropriated under the ARRA must be specifically tracked, OMB's Memorandum for the Heads of Departments and Agencies, dated February 18, 2009, states that agencies must ensure that all ARRA funds are clearly distinguishable from non-ARRA funds in all agency financial systems, grant and contract writing systems, and reporting systems. ARRA funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting of allotments, obligation and expenditures are required to be separate. They may not be co-mingled in budget data feeds or reports.

18. What is the timeline for contracting or expenditure of the pass-through funds?

Answer: The Act does not provide a timeline for expenditure. This should not typically be a lengthy timeline for 604(b) funds, because they are devoted to planning purposes rather than infrastructure construction and because of the ARRA's general preference for funding work that can be initiated quickly. Therefore, it is recommended that the Regions and States negotiate implementation periods that are generally no longer than 30 months in order to promote achievement of the economic-recovery goals of ARRA.

19. Must Quality Assurance (QA) Plans be developed for projects implemented with Section 604(b) funds under the ARRA?

Answer: The same rules that normally apply to a Section 604(b) set-aside grant regarding QA plans also apply to ARRA-funded 604(b) set-aside grants. If a grant project will include the generation of environmental data or use of existing environmental data, then it must develop an appropriate QA plan. For States that have existing, approved Quality Management Plans, the normal QA process under those plans shall be followed.

ATTACHMENT 2

**Clean Water State Revolving Fund Title VI Allotments
American Recovery and Reinvestment Act of 2009
(\$4 Billion)**

(\$31 for National Administration; 1.5% for Indian Tribes)

	State Allotment	604(b) Allotment	Allotment Less 604(b)
Alabama	44,264,200	442,600	43,821,600
Alaska	23,691,900	236,900	23,455,000
Arizona	26,737,000	267,400	26,469,600
Arkansas	25,895,500	259,000	25,636,500
California	283,116,500	2,830,700	280,285,800
Colorado	31,664,800	317,100	31,347,700
Connecticut	48,495,300	485,000	48,010,300
Delaware	19,433,400	194,300	19,239,100
District of Columbia	19,433,400	194,300	19,239,100
Florida	133,622,600	1,336,300	132,286,300
Georgia	66,930,600	669,600	66,261,000
Hawaii	30,658,900	306,600	30,352,300
Idaho	19,433,400	194,300	19,239,100
Illinois	179,033,400	1,790,300	177,243,100
Indiana	95,401,500	954,000	94,447,500
Iowa	53,575,800	535,800	53,040,000
Kansas	35,731,500	357,300	35,374,200
Kentucky	50,381,900	503,800	49,878,100
Louisiana	43,516,600	435,200	43,081,400
Maine	30,643,200	306,400	30,336,800
Maryland	95,742,000	957,400	94,784,600
Massachusetts	134,401,200	1,343,900	133,057,300
Michigan	170,211,100	1,702,100	168,509,000
Minnesota	72,758,600	727,600	72,031,000
Mississippi	35,665,000	356,700	35,308,300
Missouri	109,739,200	1,097,400	108,641,800
Montana	19,433,400	194,300	19,239,100
Nebraska	20,247,500	202,500	20,045,000
Nevada	19,433,400	194,300	19,239,100
New Hampshire	39,559,500	395,600	39,163,900
New Jersey	161,764,500	1,617,600	160,146,900
New Mexico	19,433,400	194,300	19,239,100
New York	436,933,300	4,369,100	432,564,200
North Carolina	71,443,500	714,400	70,729,100
North Dakota	19,433,400	194,300	19,239,100

	State Allotment	604(b) Allotment	Allotment Less 604(b)
Ohio	222,851,900	2,228,800	220,623,100
Oklahoma	31,981,900	319,800	31,662,100
Oregon	44,718,200	447,200	44,271,000
Pennsylvania	156,805,600	1,567,800	155,237,800
Rhode Island	26,580,400	265,800	26,314,600
South Carolina	40,553,700	405,500	40,148,200
South Dakota	19,433,400	194,300	19,239,100
Tennessee	57,505,500	575,100	56,930,400
Texas	180,931,600	1,809,700	179,121,900
Utah	20,858,600	208,700	20,649,900
Vermont	19,433,400	194,300	19,239,100
Virginia	81,013,400	810,100	80,203,300
Washington	68,840,500	688,600	68,151,900
West Virginia	61,709,200	617,100	61,092,100
Wisconsin	107,018,500	1,070,200	105,948,300
Wyoming	19,433,400	194,300	19,239,100
American Samoa	3,554,000	100,000	3,454,000
Guam	2,571,500	100,000	2,471,500
Northern Marianas	1,651,700	100,000	1,551,700
Puerto Rico	51,630,500	516,300	51,114,200
Pacific Trust Territories	-	-	-
Virgin Islands	2,062,700	100,000	1,962,700
State Total	3,909,000,000	39,392,000	3,869,608,000
Indians Tribes	60,000,000		
National Administration	31,000,000		
Total All Funds	4,000,000,000		

ATTACHMENT 3

Section 205(j) of the Clean Water Act

(j) Water quality management plan; reservation of funds for nonpoint source management

(1) The Administrator shall reserve each fiscal year not to exceed 1 per centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or \$100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning, including, but not limited to—

(A) identifying most cost effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(B) developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under subparagraph (A);

(C) determining the nature, extent, and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(D) determining those publicly owned treatment works which should be constructed with assistance under this subchapter, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of this Act.

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection. In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this chapter, the allocation to such organization may be less than 40 percent of such amount.

(4) All activities undertaken under this subsection shall be in coordination with other related provisions of this chapter.

(5) Nonpoint source reservation.— In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or \$100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed \$100,000, may be used by such State for other purposes under this subchapter.

ATTACHMENT 4

Section 303(e) of the Clean Water Act

(e) Continuing planning process

- (1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.
- (2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.
- (3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:
- (A) effluent limitations and schedules of compliance at least as stringent as those required by sections 301(b)(1), section 301(b)(2), section 306, and section 307 of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;
- (B) the incorporation of all elements of any applicable area-wide waste management plans under section 208 of this Act, and applicable basin plans under section 209 of this Act;
- (C) total maximum daily load for pollutants in accordance with subsection (d) of this section;
- (D) procedures for revision;
- (E) adequate authority for intergovernmental cooperation;
- (F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;
- (G) controls over the disposition of all residual waste from any water treatment processing;
- (H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of this Act.

ATTACHMENT 5

Selected Text from the American Recovery and Reinvestment Act of 2009

STATE AND TRIBAL ASSISTANCE GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For an additional amount for “State and Tribal Assistance Grants”, \$6,400,000,000, which shall be allocated as follows:

(1) \$4,000,000,000 shall be for capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act and \$2,000,000,000 shall be for capitalization grants under section 1452 of the Safe Drinking Water Act:

Provided, That the Administrator may retain up to 1 percent of the funds appropriated herein for management and oversight purposes:

Provided further, That funds appropriated herein shall not be subject to the matching or cost share requirements of sections 602(b)(2), 602(b)(3) or 202 of the Federal Water Pollution Control Act nor the matching requirements of section 1452(e) of the Safe Drinking Water Act:

Provided further, That the Administrator shall reallocate funds appropriated herein for the Clean and Drinking Water State Revolving Funds (Revolving Funds) where projects are not under contract or construction within 12 months of the date of enactment of this Act:

Provided further, That notwithstanding the priority rankings they would otherwise receive under each program, priority for funds appropriated herein shall be given to projects on a State priority list that are ready to proceed to construction within 12 months of the date of enactment of this Act:

Provided further, That notwithstanding the requirements of section 603(d) of the Federal Water Pollution Control Act or section 1452(f) of the Safe Drinking Water Act, for the funds appropriated herein, each State shall use not less than 50 percent of the amount of its capitalization grants to provide additional subsidization to eligible recipients in the form of forgiveness of principal, negative interest loans or grants or any combination of these:

Provided further, That, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds appropriated herein for the Revolving Funds shall be for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities:

Provided further, That notwithstanding the limitation on amounts specified in section 518(c) of the Federal Water Pollution Control Act, up to 1.5 percent of the funds appropriated herein for the Clean Water State Revolving Funds may be reserved by the Administrator for tribal grants under section 518(c) of such Act:

Provided further, That up to 4 percent of the funds appropriated herein for tribal set-asides under the Revolving Funds may be transferred to the Indian H. R. 1—56 Health Service

to support management and oversight of tribal projects:

Provided further, That none of the funds appropriated herein shall be available for the purchase of land or easements as authorized by section 603(c) of the Federal Water Pollution Control Act or for activities authorized by section 1452(k) of the Safe Drinking Water Act:

Provided further, That notwithstanding section 603(d)(2) of the Federal Water Pollution Control Act and section 1452(f)(2) of the Safe Drinking Water Act, funds may be used to buy, refinance or restructure the debt obligations of eligible recipients only where such debt was incurred on or after October 1, 2008;

(end)

ATTACHMENT 6

CWSRF Project Descriptions and Examples for Green Project Reserve

The ARRA requires that at least 20% of each State's capitalization grant be used to fund projects referred to as the Green Project Reserve. The following is a set of examples for projects EPA believes would be eligible. It should be noted that all project eligibility requirements otherwise applicable to the CWSRF program apply to the Green Project Reserve.

Under the Green Project Reserve in the CWSRF both entire projects may be considered for inclusion or appropriate identifiable components of larger projects may be considered for inclusion. Whatever projects or project components are included, such projects or project components must clearly advance the objectives articulated in the specific categories discussed below.

Business Case Requirements for Counting Costs toward the 20% Reserve

There are some types of projects that clearly will qualify towards the 20% Green Project Reserve, being entirely and explicitly framed as a green infrastructure or a water or energy efficiency project. However, some types of traditional projects may also have benefits that may in some cases be counted towards the 20% Green Project requirement. For such traditional projects (or portion of a project) to be counted towards the 20% requirement, the State's project files must contain documentation that the clear business case for the project (or portion) investment includes achievement of identifiable and substantial benefits that qualify as Green Project benefits.

The required documentation could be a simple memo but must indicate the basis on which this project was judged to qualify to be counted toward the 20% requirement. Such a memo would typically include direct reference to a preliminary engineering or other planning document that makes clear that the basis upon which the project (or portion) was undertaken included identifiable and substantial benefits qualifying for the Green Project Reserve.

Water Efficiency

- I. Water efficiency is the use of improved technologies and practices to deliver equal or better services with less water.
- II. Projects eligible for assistance include assistance
 - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
 - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible; to the extent practicable, such projects should be coordinated with drinking water systems and projects.
 - ii. Building activities that implement capital water efficiency projects are eligible.

- b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
 - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital water efficiency projects are eligible.
 - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
 - i. Planning and design activities for water efficiency that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital water efficiency projects are eligible.
- III. Water efficiency projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- IV. Drinking Water Utilities may apply to the Clean Water State Revolving Fund.
- V. Examples of projects include
- a. Installation of water meters
 - b. Retrofit or replacement of water using fixtures, fittings, equipment or appliances
 - c. Efficient landscape or irrigation equipment
 - d. Systems to recycle gray water
 - e. Reclamation, recycling, and reuse of existing rainwater, condensate, degraded water, stormwater, and/or wastewater streams.
 - f. Collection system leak detection equipment

Energy Efficiency

- I. Energy efficiency is the use of improved technologies and practices to reduce the energy consumption of water quality projects, including projects to reduce energy consumption or produce clean energy used by a treatment works defined in Sec. 212.
 - a. Web link to EPA's clean energy site <http://www.epa.gov/cleanenergy/>
 - b. Clean energy includes wind, solar, geothermal, hydroelectric, and biogas combined heat and power systems.
- II. Projects eligible for assistance include assistance
 - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
 - i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital energy efficiency projects are eligible.
 - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
 - i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital energy efficiency projects are eligible.
 - c. to public or privately owned projects that develop or implement a Comprehensive

Conservation Management Plan established under section 320 of the Clean Water Act.

- i. Planning and design activities for energy efficiency that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital energy efficiency projects are eligible.
- III. Energy efficiency projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- IV. Examples of projects include
- a. Energy efficient retrofits and upgrades to pumps and treatment processes
 - b. Leak detection equipment for treatment works
 - c. Producing clean power for 212 treatment works on site (wind, solar, hydroelectric, geothermal, biogas powered combined heat and power)²

Green Infrastructure

- I. Definition: Green Infrastructure includes a wide array of practices at multiple scales that manage and treat stormwater and that maintain and restore natural hydrology by infiltrating, evapotranspiring and capturing and using stormwater. On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, floodplains and wetlands, coupled with policies such as infill and redevelopment that reduce overall imperviousness in a watershed. On the local scale green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements and cisterns.
- II. Projects eligible for assistance include assistance
- a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
 - i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital green infrastructure projects are eligible.
 - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
 - i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital green infrastructure projects are eligible.
 - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
 - i. Planning and design activities for green infrastructure that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital green infrastructure projects are eligible.

² Project file should include a calculation of the energy efficiency of the project.

- III. If a project is specifically required by a draft or final NPDES permit, then it can only be funded through Sec. 212 or Sec. 320 authority
- IV. Green infrastructure projects can be stand alone projects. They do not need to be part of a larger capital improvement project.
- V. Examples of projects include
 - a. Implementation of green streets (combinations of green infrastructure practices in transportation rights-of-ways), for either new development, redevelopment or retrofits
 - b. Implementation of water harvesting and reuse programs or projects, where consistent with state and local laws and policies.
 - c. Implementation of wet weather management systems for parking areas which include: the incremental cost of porous pavement, bioretention, trees, green roofs, and other practices that mimic natural hydrology and reduce effective imperviousness at one or more scales, including constructed wetlands.
 - d. Hydromodification to establish or restore riparian buffers, floodplains, wetlands and other natural features.
 - e. Downspout disconnection to remove stormwater from combined sewers and storm sewers.
 - f. Comprehensive retrofit programs designed to keep wet weather out of all types of sewer systems using green infrastructure technologies and approaches.
 - g. Implementation of comprehensive street tree or urban forestry programs, including expansion of tree box sizes to manage additional stormwater and enhance tree health.

Environmentally Innovative Projects

- I. Projects that demonstrate new and/or innovative approaches to managing water resources in a more sustainable way, including projects that achieve pollution prevention or pollutant removal with reduced costs and projects that foster adaptation of water protection programs and practices to climate change.
- II. Projects eligible for assistance include assistance
 - a. to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works defined in section 212 of the Clean Water Act
 - i. Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital environmentally innovative projects projects are eligible.
 - b. to public or privately owned projects that implement State Nonpoint Source Management Plans established under section 319 of the Clean Water Act
 - i. Planning and design activities for environmentally innovative projects that are reasonably expected to result in a capital project are eligible.
 - ii. Building activities that implement capital environmentally innovative projects projects are eligible.
 - c. to public or privately owned projects that develop or implement a Comprehensive Conservation Management Plan established under section 320 of the Clean Water Act.
 - i. Planning and design activities for environmentally innovative projects that

- are reasonably expected to result in a capital project are eligible.
- ii. Building activities that implement capital environmentally innovative projects projects are eligible.
- III. Examples of projects include
- a. Green Infrastructure/Low Impact development stormwater projects
 - b. Wetland restoration and constructed wetlands
 - c. Decentralized wastewater treatment solutions to existing deficient or failing on site systems.
 - d. Water reuse projects that reduce energy consumption, recharge aquifers or reduce water withdrawals and treatment costs
 - e. The water quality portion of projects that employ development and redevelopment practices that preserve or restore site hydrologic processes through sustainable landscaping and site design.
 - f. Projects that use water balance approaches (water budgets) at the project, local or state level that preserve site, local or regional hydrology. Such an effort could show-case efforts to plan and manage in a concerted manner, surface and groundwater withdrawals, stream flow (aquatic species protection), wetland and floodplain storage, groundwater recharge and regional or local reuse and harvesting strategies using a quantified methodology.
 - g. Projects that facilitate adaptation of clean water programs and practices to climate change.
 - h. The water quality portion of projects that demonstrate the energy savings and greenhouse reduction benefits of sustainable site design practices and the use of green stormwater infrastructure.
 - i. Projects that incorporate differential uses of water based on the level of treatment to reduce the costs of treating all water to potable water standards.
 - j. Projects that identify and quantify the benefits of using integrated water resources management approaches.