



PUBLIC HEALTH DIVISION  
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

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March 8, 2024

### Legal Notice

Legal notice of public review and comment period concerning the proposed 2023 Intended Use Plan (IUP) attached below for Oregon's new Bipartisan Infrastructure Law (BIL) Emerging Contaminants program. The BIL Emerging Contaminants increases funding to Oregon's existing Drinking Water State Revolving Fund (DWSRF) program with priority funding going towards perfluoroalkyl and polyfluoroalkyl substances (PFAS), manganese, and cyanotoxin mitigation.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on the proposed IUP as part of the grant application process to the U.S. Environmental Protection Agency (EPA). This IUP explains how OHA-DWS prioritizes funding to eligible community and non-profit non-community public water systems and the funding of Set-Aside activities. It also is a key aspect of how we will procure the funding resources that the EPA has appropriated Oregon during Federal fiscal year 2023.

The public comment period for the IUP will be from Monday, March 11 through Thursday, April 11, 2024. If you would like to make a comment, please email your comments to [DWS.SRF@odhsoha.oregon.gov](mailto:DWS.SRF@odhsoha.oregon.gov) by no later than 5pm on Thursday, April 11<sup>th</sup> to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

*Adam DeSempfle*

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March 1, 2024

Ms. Lacey Davidson  
Grants Specialist, EPA Region 10  
United States Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, OMP-145  
Seattle, WA 98101

**Reference: Application, FFY-2023 Oregon's Drinking Water State Revolving Fund (FON: EPA-CEP-01) – BIL Emerging Contaminants**

Dear Ms. Davidson:

Please find in the Grants.gov application package the Oregon Health Authority's (OHA) complete Drinking Water State Revolving Fund – BIL Emerging Contaminants capitalization grant application and Intended Use Plan (IUP) for FFY-2023 appropriations. This application package also includes OHA's Set-Aside work plans, the budget narrative (i.e., SF-424A), as well as the current indirect cost rate agreement and other required documents.

Our plans and strategy for implementing our programmatic goals while addressing the federal requirements will be copiously detailed and incorporated throughout the IUP and its attachments in the grant application package.

If you have any questions or comments, please contact Adam DeSemples, Program Coordinator, at 503-956-8287 or via e-mail at [adam.desemples@oha.oregon.gov](mailto:adam.desemples@oha.oregon.gov).

Sincerely,

André Ourso, MPH, JD  
Administrator, Center for Health Protection  
Public Health Division  
Oregon Health Authority

Nadia Davidson  
Director of Finance  
Public Health Division  
Oregon Health Authority

Enclosures: Application, FFY-2023 Drinking Water State Revolving Fund (FON: EPA-CEP-01)

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# State of Oregon

## Drinking Water State Revolving Fund (DWSRF)

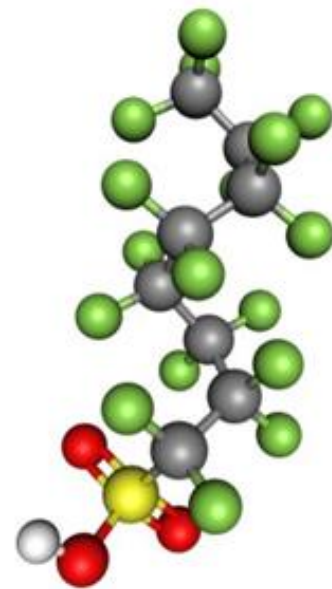
### Bipartisan Infrastructure Law (BIL) – Emerging Contaminants Program

# Intended Use Plan 2023 - *Final*

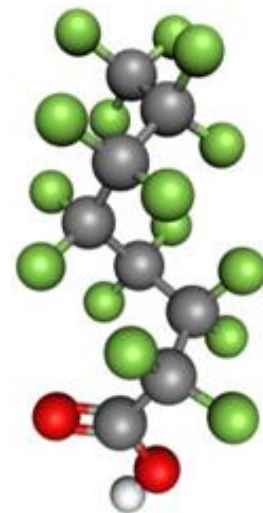
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March 2024

Oregon Health Authority  
Public Health Division  
Center for Health Protection  
Drinking Water Services  
800 NE Oregon Street, STE 640  
Portland, OR. 97232



PFOS



PFOA



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2023 Drinking Water State Revolving Fund – [BIL-Emerging Contaminants Program](#)  
Capitalization Grant Application and Intended Use Plan

# State of Oregon

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## **APPENDICES**

### **A. REQUIRED DOCUMENTS**

- Attorney General Certification
- 2022-23 BIL-Emerging Contaminants PPL
- BIL-Emerging Contaminants Rating Form & Guidance
- FFATA Set-Aside Reporting Spreadsheet

### **B. SUPPORTING DOCUMENTS**

- 2023 Grant Allotment Use Summary – BIL-Emerging Contaminants
- Project Selection Methodology – BIL-Emerging Contaminants (2023)
- Cost Allocation & Other Payroll Expense Letters (3)

### **C. TIMELY & EXPEDITIOUS USE OF FUNDS**

- Sources & Uses Table

### **D. SET-ASIDE WORK PLANS**

- Administrative Expense
- Small System Technical Assistance
- State Program Management

### **E. PUBLIC NOTICES**

- Intended Use Plan (IUP) Public Notice Letter
- Project Priority List Public Notice Letter

### **F. AGREEMENTS**

- Interagency Agreement (with Business Oregon)
- Interagency Agreement (with DEQ)
- Operating Agreement (with EPA)

## **COMMON ACRONYMS**

• ACS	-	AMERICAN COMMUNITY SURVEY
• AIS	-	AMERICAN IRON & STEEL
• AWWA	-	AMERICAN WATER WORKS ASSOCIATION
• AWIA	-	AMERICA'S WATER INFRASTRUCTURE ACT
• BABA	-	BUILD AMERICA, BUY AMERICA ACT
• BIL	-	BIPARTISAN INFRASTRUCTURE LAW
• BMP	-	BEST MANAGEMENT PRACTICES
• CA	-	COST ALLOCATION & CAPACITY ASSESSMENT
• CFR	-	CODE OF FEDERAL REGULATIONS
• CHP	-	CENTER FOR HEALTH PROTECTION
• CR	-	CONTINUING RESOLUTION
• CWSRF	-	CLEAN WATER STATE REVOLVING FUND
• DB	-	DAVIS BACON
• DBE	-	DISADVANTAGED BUSINESS ENTERPRISE
• DEQ	-	DEPARTMENT OF ENVIRONMENTAL QUALITY
• DWAC	-	DRINKING WATER ADVISORY COMMITTEE
• DWS	-	DRINKING WATER SERVICES
• DWSP	-	DRINKING WATER SOURCE PROTECTION
• DWSRF	-	DRINKING WATER STATE REVOLVING FUND
• EDU	-	EQUIVALENT DWELLING UNIT
• EPA	-	ENVIRONMENTAL PROTECTION AGENCY
• ER	-	ENVIRONMENTAL REVIEW
• ERP	-	ENFORCEMENT RESPONSE POLICY
• ETT	-	ENFORCEMENT TARGETING TOOL
• FFATA	-	FEDERAL FUNDING ACCOUNTABILITY & TRANSPARENCY ACT
• FFY	-	FEDERAL FISCAL YEAR
• FSRS	-	FFATA SUBAWARD REPORTING SYSTEM
• FTE	-	FULL TIME EQUIVALENT
• GIS	-	GEOGRAPHICAL INFORMATION SYSTEMS
• GPR	-	GREEN PROJECT RESERVE
• IAA	-	INTER-AGENCY AGREEMENT
• IFA	-	INFRASTRUCTURE FINANCE AUTHORITY
• IGA	-	INTERGOVERNMENTAL AGREEMENT
• IUP	-	INTENDED USE PLAN
• LOI	-	LETTER OF INTEREST
• MCL	-	MAXIMUM CONTAMINANT LEVEL
• MHI	-	MEDIAN HOUSEHOLD INCOME
• NIMS	-	NATIONAL INFORMATION MANAGEMENT SYSTEM
• OA	-	OPERATING AGREEMENT
• OAR	-	OREGON ADMINISTRATIVE RULE
• OFS	-	OFFICE OF FINANCIAL SERVICES
• OHA	-	OREGON HEALTH AUTHORITY
• OMB	-	OFFICE OF MANAGEMENT & BUDGET
• ORS	-	OREGON REVISED STATUTE
• PBR	-	PROJECT & BENEFITS REPORTING
• PER	-	PROGRAM EVALUATION REPORT
• PPL	-	PROJECT PRIORITY LIST
• PPP	-	PUBLIC PRIVATE PARTNERSHIPS
• RCAC	-	RURAL COMMUNITY ASSISTANCE CORPORATION
• RLDWA	-	REDUCTION OF LEAD IN DRINKING WATER ACT
• SDWA	-	SAFE DRINKING WATER ACT
• SDWRLF	-	SAFE DRINKING WATER REVOLVING LOAN FUND
• SFY	-	STATE FISCAL YEAR
• SIPP	-	SUSTAINABLE INFRASTRUCTURE PLANNING PROJECTS
• SOS	-	SECRETARY OF STATE
• SPM	-	STATE PROGRAM MANAGEMENT
• ULO	-	UNLIQUIDATED OBLIGATION
• WIFIA	-	WATER INFRASTRUCTURE FINANCE & INNOVATION ACT
• WIIN	-	WATER INFRASTRUCTURE IMPROVEMENT FOR THE NATION ACT



# Oregon’s 2023 DWSRF – BIL-Emerging Contaminants, Intended Use Plan

## Introduction & Purpose

On August 6, 1996, the Safe Drinking Water Act (SDWA) Amendments of 1996 ([P.L. 104-182](#)) were signed into law. Section 1452 of this act authorized the Administrator of the U.S. Environmental Protection Agency (EPA) to establish a Drinking Water State Revolving Fund (DWSRF) program to assist public water systems with affordable financing for infrastructure needs to achieve or maintain compliance with the SDWA requirements and to protect public health.

Congress appropriates funding for the DWSRF. EPA then awards capitalization grants to each state to contribute to the capital of their DWSRF program. Award amounts are based upon the results of the most recent Drinking Water Infrastructure Needs Survey and Assessment. The state provides a 20 percent match. As a part of each state’s annual capitalization grant application process to the EPA, Section 1452(b) of the SDWA, requires states to submit an Intended Use Plan (IUP) identifying the use of funds in that state’s DWSRF program and how those uses support the goal of protecting public health.

### ❖ **Awarded DWSRF Capitalization Grants Cover:**

1. **Safe Drinking Water Revolving Loan Fund (SDWRLF)**: Assists eligible public water systems achieve, maintain, or regain compliance and protect public health by funding drinking water infrastructure or resiliency improvement projects such as treatment, distribution, storage, or a new source. Oregon’s DWSRF capitalizes the SDWRLF (i.e., Loan Fund) per [Oregon Administrative Rule \(OAR\) 123-049](#) and is managed by the Oregon Business Development Department, DBA Business Oregon through its Infrastructure Finance Authority.
2. **Program Set-Asides**: State DWSRF programs include four unique Set-Asides that allow states the option of providing a portion of its capitalization grant towards those activities. Activities such as covering the costs to administer the DWSRF program, regulatory work (by counties) to ensure compliance with SDWA, technical assistance, and capacity development are a few of the primary focuses these Set-Asides support. Partner costs to Oregon’s Department of Environmental Quality (DEQ) are also covered by Set-Asides for its assistance with source water protection efforts throughout the state. See Section IV below or **Appendix D** for more details about these four Set-Aside activities.

## Summary

The State of Oregon, Drinking Water Services (DWS) is an Oregon Health Authority (OHA) program located within the Center for Health Protection (CHP) and is the primacy agency in managing Oregon’s DWSRF program.

Detailed in EPA’s memorandum dated April 3, 2023, states are allocated the 2023 traditional “Base” DWSRF and its [Bipartisan Infrastructure Law \(BIL\)](#) capitalization grant amounts totaling \$79,243,000. These funds are targeted for use for State Fiscal Years 2024 through 2025 (July 1, 2023 – June 30, 2025). These efforts will be in coordination with our partners at Business Oregon

by continuing to offer low interest loans from the Loan Fund to eligible drinking water systems while continuing to support the four separate program Set-Aside activities to meet federal drinking water program mandates.

This IUP will focus on the high-level intended uses of the new BIL Emerging Contaminants grants through the [Infrastructure Investment and Jobs Act \(H.R. 3684\)](#) (i.e., BIL, Drinking Water Sec. 50101-50115). OHA and its state agency partner (i.e., Business Oregon) are pursuing the entire FFY2023 BIL-Emerging Contaminants allotment of \$11,493,000 (plus \$67,000 FFY2022 reallocated funds) to further expand its funding efforts to reduce and mitigate prevalent emerging contaminant concerns throughout Oregon.

These annual BIL-Emerging Contaminants grant funding appropriations to Oregon’s DWSRF program will run from FFY2022-2026. For more BIL details, see Section III in this IUP or visit [Oregon.gov/bil](https://oregon.gov/bil).

This IUP and its appendices, including its Project Priority Lists (PPL), incorporates BIL-Emerging Contaminants grant funding details and federal mandates as part of Oregon’s DWSRF program to expand more funding options to eligible drinking water systems throughout the state.

Finally, many of the details throughout this IUP demonstrate Oregon’s continued efforts to programmatically improve processes and policies while protecting public drinking water supplies statewide.

### **Interagency Implementation**

Oregon’s DWSRF program is carried out through direct involvement activities and with the utilization of partnership agreements. The primacy agency is OHA via its DWS who provide direct services with a complement of experienced regulatory technical staff.

OHA inter-agency agreements (IAAs) with Business Oregon and DEQ are maintained and updated on a biennial basis. Both Business Oregon and DEQ are state agencies with respective IAAs. Visit **Appendix F** to see IAAs with OHA.

Since OHA is the lead agency, it is responsible for establishing program and project priorities (via project ratings and rankings), oversight of program operation, technical assistance, capacity development, and the annual capitalization grant application and reporting processes. Business Oregon operates, manages, and administers the Safe Drinking Water Revolving Loan Fund (SDWRLF) for drinking water infrastructure projects, Drinking Water Source Protection (DWSP) loans and grants, and the Sustainable Infrastructure Planning Projects (SIPP) program funds (100% forgivable loans). While managing the Loan Fund, Business Oregon ensures compliance and reporting with subsidy (forgivable loan) requirements as outlined in annual grant agreements. Business Oregon staff also works with communities to provide loan servicing functions that result from the Loan Fund, as well as project management services to ensure project completion and adherence to federal standards. DEQ with OHA, complete source water assessments and implement the local DWSP programs.

## I. Need for the Program

This IUP and its supporting documents (e.g., PPL, financing details) clearly demonstrates Oregon’s robust drinking water infrastructure need and further explains how the funds are intended to be used.

### A. **Table 1: Comprehensive 2022-23 BIL-Emerging Contaminants Project Priority List Results**

<b>Project Priority List Description</b>	<b>No. of Letters of Interest</b>	<b>Funding Request Total</b>
Perfluoroalkyl & Polyfluoroalkyl Substances (PFAS)	18	\$30,876,618
Manganese	3	\$42,162,169
Cyanotoxins	7	\$10,123,572
<b>Total</b>	<b>28</b>	<b>\$83,162,359</b>

- All projects submitted on a Funding Interest Form are reviewed for eligibility. Eligible projects are then prioritized to create a PPL.
- 18 of the potential projects submitted are to address or mitigate PFAS, 3 for manganese projects, and 7 are cyanotoxins projects.
- Twenty (20) of the 28 eligible projects (71%) are for small water systems serving fewer than 10,000 people.
- Nineteen (19) of the 28 eligible projects (68%) are for disadvantaged communities.
- Given the ongoing high demand on the DWSRF, the Oregon SDWRLF program will not be able to fund all projects currently requesting funding in SFY2024-25. The program will continue to apply for BIL grants through 2026 to work towards meeting these robust needs statewide.
- See **Appendix A** for details on the combined PPL and Public Notices. Also, see [OHA’s Project Priority List Webpage](#) for project details.

### B. **Drinking Water Infrastructure Needs Survey Results**

EPA’s 7th Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) assesses the nation’s public water systems’ infrastructure needs over the next 20 years and is used to allocate set percentages of the Drinking Water State Revolving Fund (DWSRF) grants, including Bipartisan Infrastructure Law funding, to states.

The 2019-20 nationwide Drinking Water Infrastructure Needs Survey, sponsored by the EPA with assistance from OHA and its water suppliers, was completed in 2022. The 2019-20 surveyed results indicated that Oregon’s drinking water infrastructure needs are more than \$10 billion over the next twenty years, a 160 percent increase from the 2015 Needs Survey results. Nearly half (i.e., \$5.14 billion) of needs in Oregon are for medium-sized water systems serving between 3,001 and 100,000 people according to the survey.

Previous allocation results conducted from the 2011 Needs Survey awarded Oregon with 1.42 percent and 2015 results equaled 1.32 percent of the total annual EPA DWSRF appropriations. The 2019-20 Needs Survey results supersede the 2011 and 2015

outcomes and now allocate 1.50 percent of the annual national appropriation to Oregon for “Base” DWSRF, BIL-General Supplemental, and BIL-Emerging Contaminants. BIL-Lead Service Line Replacement annual allocation was reduced to 1.00 percent.

Oregon’s 1.50 percent allocation of the nationwide 2023 BIL-Emerging Contaminants DWSRF Allotment of approximately \$764,000,000, is \$11,493,000, the focus of this IUP.

**C. Cumulative Grant Awards**

The first grants from the DWSRF were distributed to states, tribes, and territories from the 1997 appropriation and totaled \$1.275 billion. From FFY1997 through September 30, 2023, cumulative federal grants (including ARRA and BIL) for the DWSRF program to states total approximately \$24.7 billion. Oregon’s total federal grant allocations received through SFY2023 (including ARRA and BIL) is over \$351 million.

**D. Targeted Capacity Development for Priority Non-Compliers**

In addition to these substantial infrastructure needs, many small water systems in Oregon lack the technical, managerial, and financial capacities to provide safe drinking water to their respective users.

A system score is a violation point-based value that provides OHA a comprehensive approach for assessing a water system's level of regulatory compliance. A single value is calculated for each water system based on compliance with all rules, instead of using the rule based SNC (significant non-compliance) status which was based on failure to comply with individual drinking water rules.

OHA’s DWS targets systems with the highest scores (called Priority Non-Compliers (PNC)) for capacity development assistance and to ensure that these systems are given the fullest possible consideration for available DWSRF infrastructure financing. EPA utilizes an Enforcement Response Policy to ensure that no community or non-profit non-community systems from the System Scores list with a score of 11 or higher receive DWSRF funding unless the funding directly supports the water system in achieving or regaining compliance.

Please see OHA’s [Capacity Development Webpage](#) for resources on Technical Managerial and Financial Capacity and the Annual State Capacity Development Program Implementation Reports.

For Oregon’s PNC list, see here, <https://yourwater.oregon.gov/sscore.php>.

**II. Table 2: Oregon’s 2023 DWSRF – BIL-Emerging Contaminants (EC) Allotment**

The 2023 program is allotted as described in the table below:

(For more details, visit the Grant Allotment Use Summary in the **Appendix B** portion of the IUP)

<b>2023 BIL-Emerging Contaminants</b>	<b>EPA Site Project Code</b>	<b>Federal Funds</b>	<b>Percent of Allotment</b>	<b>State Match Funds*</b>
Project Funds for Water Systems	<b>DA</b>	\$ 10,288,400	89.00%	\$ -
Set-Aside Activities:				
1.) Administrative Expense	<b>DD</b>	\$ 462,400	4.00%	\$ -
2.) Small System Tech. Assist.	<b>DE</b>	\$ 231,200	2.00%	\$ -
3.) State Program Management	<b>DF</b>	\$ 578,000	5.00%	\$ -
4.) Local Assistance (LA)				
<i>LA - Implementation of Protection</i>	<b>DGD</b>	\$ -	0.00%	\$ -
<i>LA - Capacity Development</i>	<b>DGC</b>	\$ -	0.00%	\$ -
<i>LA - Drinking Water Source Protection</i>	<b>DGB</b>	\$ -	0.00%	\$ -
<b>Total</b>		<b>\$ 11,560,000</b>	<b>100.00%</b>	<b>\$ -</b>

\* The \$11,560,000 total includes \$67,000 additional reallocated funds from EPA. State Match is not required.

**A. BIL-EC Allocation Table Overview (See Section IV or Appendix D for details on Set-Asides)**

- Project Funds for Water Systems: 89% of the BIL-EC Allocation is dedicated to funding project contracts of 100% forgivable loans to address or mitigate confirmed Emerging Contaminants.
- Administrative Expense: OHA will set-aside 4% of the BIL-EC allocation to administer and operate the grant (100% forgivable loan) and Set-Asides, which is carried out jointly between the Oregon Health Authority (OHA) and Business Oregon.
- Small System Technical Assistance: 2% of the BIL-EC Allocation will be dedicated to, at a minimum, funding the Circuit Rider Program and On-Site Technical Assistance to provide technical, managerial, and planning information to system operators and administrators.
- State Program Management: 5% of the funds will support regulatory work conducting sanitary surveys, responding to water quality alerts, follow-up on priority non-compliant water systems, administer contracts, and provide clerical support.
- Local Assistance (LA): These Local Assistance programs will not be funded by 2023 BIL-EC grant funding. These programs support partnerships with DEQ that are funded with the Base Capitalization Grant and BIL-General Supplemental Grants.
- EPA Site Project Code: A simplified internal coding for tracking grant fund balances as required by EPA.
- State Match: Oregon’s State Match funds are not required for BIL-Emerging Contaminants funding.

## **B. Proportionality Ratio for Expending the Funds**

BIL-Emerging Contaminants grant requirements do not include state matching funds, therefore, the figures for 2023 above do not have to adhere to the Cash Draw Rule (per 40 CFR part 35.3560) or proportionality ratio requirements.

## **C. Cost Allocation Plan**

Additionally, this grant year, OHA will continue to impose its cost allocation plan. Cost allocation acts like indirect costs, as allowed under OMB 2 Code of Federal Regulations (CFR) Part 225 (formerly OMB Circular A-87). The cost allocation rate will affect some direct costs (e.g., Set-Aside activities), but not the Loan Fund, nor the DWSP loans or grants in the Local Assistance Set-Aside. Our current cost allocation rate is 17.79 percent and is expected to be applied to \$957,933 of Set-Asides, resulting in a cost of approximately \$170,417.

OHA continues to undergo an in-depth cost rate review for future state fiscal years as explained in our recent cost allocation letter dated, June 30, 2021.

## **III. Bipartisan Infrastructure Law (BIL)**

### **A. BIL Overview**

On November 15, 2021, the Infrastructure Investment and Jobs Act (H.R. 3684) commonly referred to as the [Bipartisan Infrastructure Law \(BIL\)](#) was signed into law. BIL is a federally funded infrastructure package covering multiple critical infrastructure sectors throughout the U.S., including drinking water. The law provides the EPA with grant funds that can be appropriated to states for investments in drinking water infrastructure over the next five federal fiscal years (2022 – 2026). States have until the end of the second federal fiscal year after appropriations announced to apply. For example, the 2023 BIL grant appropriations were announced in the spring of 2023, but states have until September 30<sup>th</sup>, 2024, to apply.

BIL funding will be available to water systems through the state's existing Drinking Water State Revolving Fund (DWSRF), implemented jointly by Business Oregon and OHA Drinking Water Services. BIL authorizes increases to Oregon's existing "Base" [DWSRF](#) program and includes appropriations that supplement DWSRF funding for infrastructure improvements, funding for identifying and replacing lead service lines and gooseneck connectors, and funding to address emerging contaminants (e.g., PFAS or other unregulated contaminants).

It is anticipated that Oregon's DWSRF program will evolve over the life of BIL funding to accommodate current and future needs and to better meet federal requirements, program goals, and the needs of Oregonians and their communities as the BIL funding has intended.

### **B. Summary of Oregon's BIL Appropriations (2022-2026)**

With the recent release of the new 2019-20 Drinking Water Needs Survey (DWNS) results, Oregon will receive 1.50 percent of the annual national allotment, starting with

2023. See charts below for current and anticipated appropriations and subsidy totals. For this IUP, the state is applying for the 2023 BIL-EC allocation of \$11.49 million. The 2024 allocations will be announced by EPA in the Spring of 2024, and Oregon’s DWSRF program anticipates applying for and posting additional IUP’s in the Winter of 2024.

<b>Oregon's Three BIL Appropriations (2022 - 2026)</b>							
<b>Fiscal Year</b>	<b>General Supplemental</b>	<b>Needs Survey Rate (%)</b>	<b>Lead Service Line Replacement</b>	<b>Needs Survey Rate (%)</b>	<b>Emerging Contaminants</b>	<b>Needs Survey Rate (%)</b>	
<b>2022</b>	\$ 23,673,000	1.32%	\$ 37,300,000	1.32%	\$ 9,940,000	1.32%	
<b>2023</b>	\$ 31,672,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%	
<b>2024</b>	Anticipated	\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%
<b>2025</b>		\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%
<b>2026</b>		\$ 34,575,000	1.50%	\$ 28,650,000	1.00%	\$ 11,493,000	1.50%
<b>Total</b>	\$ 159,070,000		\$ 151,900,000		\$ 55,912,000		

**C. Subsidy / Forgivable Loan Requirements for BIL**

A key priority of BIL is to ensure that disadvantaged communities benefit equitably, therefore, federal funding requirements stipulate that a significant portion of funds be provided in the form of loan forgiveness or subsidy.

Eighty-nine percent (\$10,228,400) of the BIL-EC allocation (\$11,493,000) will be awarded as forgivable project loans. These are loans that do not need to be re-paid upon successful project completion. The remaining 11% of the grant is used for Set-Aside activities.

All projects eligible under BIL-Emerging Contaminant project funding is eligible for 100% forgivable loan, but the EPA requires a minimum of 25 percent of the project funding to be targeted to disadvantaged communities or eligible public water systems serving fewer than 25,000 people. Nineteen (19) of the 28 eligible projects (68%) are for disadvantaged communities, and thus the state expects no issues with meeting the 25% minimum requirement.

Each state’s DWSRF program is required to establish a definition of disadvantaged community based on the service area of a public water system that meets affordability criteria established by the state. Oregon DWSRF’s community affordability criteria define Disadvantaged Community as “a public water system with a service area that has a Median Household Income (MHI) less than the state MHI.” Please see section VII for more information on disadvantaged definitions.

<b>Oregon's BIL Subsidy Requirements (2022 - 2026)</b>				
<b>Fiscal Year</b>		<b>General Supplemental (49% of Appropriation)</b>	<b>Lead Service Line Replacement (49% of Appropriation)</b>	<b>Emerging Contaminants (100% of Appropriation)</b>
<b>2022</b>		\$ 11,599,770	\$ 18,277,000	\$ 9,940,000
<b>2023</b>		\$ 15,519,280	\$ 14,038,500	\$ 11,493,000
<b>2024</b>	<b>Anticipated</b>	\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
<b>2025</b>		\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
<b>2026</b>		\$ 16,941,750	\$ 14,038,500	\$ 11,493,000
<b>Total</b>		\$ 77,944,300	\$ 74,431,000	\$ 55,912,000

#### **D. The 3 BIL Funding Opportunities for DWSRF Programs:**

- 1. Emerging Contaminants (EC):** BIL-Emerging Contaminant funding targets projects or activities that otherwise would be eligible under the “Base” DWSRF funding program and the primary purpose must be to address and/or mitigate people’s exposure to EC in drinking water with priorities on perfluoroalkyl and polyfluoroalkyl substances (PFAS).

According to the EPA, ECs are unregulated chemical or materials (e.g., pharmaceuticals, personal care products, or unregulated contaminants) that have the potential to threaten human health, wildlife, or the environment. EPA may regulate certain ECs in the future, as EPA is proposing a new regulatory standard for PFAS. According to [EPA's BIL Implementation Memo](#), projects that address and/or mitigate EC that are listed on any of EPA’s [Contaminant Candidate Lists \(CCL1 - CCL5\)](#) are recognized as eligible.

As the primacy agency, OHA identifies water systems to be eligible for BIL-Emerging Contaminants funding. In Oregon, the ECs listed on EPA’s Contaminant Candidate Lists 1 through 5 most commonly found at the entry point where drinking water enters the water system’s distribution from the source are PFAS and manganese. Since cyanotoxins are also not regulated at the federal level, and can pose a significant public health risk, systems with cyanotoxin detections at the intake are being targeted as well for funding.

- **For PFAS**, any system with a detection is included on the eligible list. This includes systems that sampled voluntarily and submitted data to OHA, systems that sampled as part of the 2021 OHA PFAS study conducted with DEQ, and systems sampling under the fifth round of the Unregulated Contaminant Monitoring Rule (UCMR5).
- **For Manganese**, systems with manganese above the secondary maximum contaminant level (SMCL), known systems installing treatment for manganese, and systems with manganese that contacted OHA about BIL-Emerging



Contaminants funding after March 31, 2023, were considered for this FFY2023 BIL-Emerging Contaminants funding.

- **For Cyanotoxins**, systems that ever had a detection of total microcystins or cylindrospermopsin at the intake or entry point are eligible.

OHA and Business Oregon intend to inform and work with our EPA Region 10 partners to ensure we are meeting all federal requirements for BIL-Emerging Contaminants funding.

BIL-Emerging Contaminants funding opportunities (2022-2026) was opened to all eligible public water systems that meet the funding requirements and who submitted a current [Funding Interest Form \(FIF\)](#) with direct outreach performed by OHA DWS program staff to ensure that systems with confirmed ECs were contacted and made aware. In total, 53 water systems with known emerging contaminant detections (24 water systems with PFAS, 10 water systems with manganese, and 19 water systems with cyanotoxins) have been directly contacted regarding the BIL-Emerging Contaminants funding opportunity and invited to apply.

Currently, Oregon’s plans are to apply for the entire FFY2023 BIL-Emerging Contaminants allotment of \$11,493,000 in early 2024. Visit **Appendix A** for project and funding details on the BIL-Emerging Contaminants PPL.

- 2. General Supplemental:** BIL-General Supplemental funding represents a continuation of Oregon’s “Base” DWSRF program – which provides low-interest loans to eligible public water systems for planning, design, and construction of infrastructure improvements per Section 1452 of SDWA. Additional forgivable loan is also made available to disadvantaged communities through the BIL as mandated by federal requirements.

With Oregon’s DWSRF program having already applied for its FFY2023 BIL-General Supplemental allotment of \$31,672,000 in December 2023, its next BIL-General Supplemental grant application for FFY2024 funding will not occur until late 2024.

- 3. Lead Service Line Replacement (LSLR):** BIL-Lead Service Line Replacement funding also targets projects or activities that otherwise would be eligible under the “Base” DWSRF funding program.

According to [EPA's BIL Implementation Memo](#), to be eligible for BIL-Lead Service Line Replacement funding, the project or activity must be a LSLR or associated activity directly connected to the identification, planning, design, and replacement of lead service lines. Additionally, any identified LSLR project must also replace the entire lead service line and not just a portion – unless a portion has already been replaced.

Projects (e.g., lead or galvanized gooseneck removal) funded through the Loan Fund

or activities (e.g., technical assistance for inventories) funded through the Set-Asides are best if reviewed and approved by EPA Region 10 prior to grant application submittal. OHA and Business Oregon intend to inform and work with our EPA Region 10 partners to ensure we are meeting all federal requirements for BIL-Lead Service Line Replacement funding.

Oregon has had restrictions on use of lead in plumbing since 1985. Based on existing information, there are no known lead service lines under the jurisdiction of public water systems throughout Oregon. However, less is known about the private side of service lines – particularly for older homes that might not have had their service line replaced since the 1980’s.

Currently, Oregon is in the development phases for the BIL-Lead Service Line Replacement funding program with intentions of applying for the FFY2023 grant funding by July 2024. Oregon’s current efforts also relate to increasing technical assistance for contractors to assist small public water systems with their required inventories to meet the October 16, 2024, deadline. More details will be provided in the future FFY2023 BIL-Lead Service Line Replacement IUP.

#### **IV. The Set-Aside Activities:**

##### **A. Establishing Set-Aside Activities and Setting Funding Levels**

The SDWA authorizes states to use a maximum of 31 percent of its annual grant allotments for Set-Aside activities. Set-Aside activities are utilized to administer the DWSRF program and to assist water systems in meeting the requirements of the SDWA. Annually, OHA evaluates each of the four Set-Aside activities with a view toward protecting public health through prevention, while maximizing Loan Fund dollars for capital improvement projects and compliance purposes.

Utilizing the Set-Asides available for Oregon’s 2023 DWSRF – BIL-Emerging Contaminants funding, OHA decided on standard and mandated programs in each of the four Set-Aside activities as detailed below.

According to EPA 40 CFR part 35.3540(d), states are authorized to access reserved (unused) Set-Aside funds from previous grant phases. EPA Region 10 has authorized Oregon to request more than the 31 percent Set-Aside maximum when necessary. OHA will not be accessing any reserved Set-Aside funds for this 2023 grant.

Set-Aside activities needed for SFY2024-2025 include:

- Administrative Expense (4.0%)
- Technical Assistance (2.0%)
  - Circuit Rider Assistance
  - Small Water System Operator Training Course
- State Program Management (5.0%)

- State & County Program Support

- Local Assistance and Other State Programs (Combined 0.0%)
  - Implementation of Source Water Protection Program (0.0%)
  - Water System Capacity Development Program (0.0%)
  - Drinking Water Source Protection Fund/Grants (0.0%)

## **B. Description of Oregon Health Authority's Set-Aside Activities**

Work plan summaries for each of the Set-Aside Activities are outlined here. Specific detailed work plans are included in **Appendix D** and submitted as part of the Capitalization Grant applications. All the activities described are continuation of activities from the previous grant years and may include additional updates for that Set-Aside.

- 1. Administrative Expense:** OHA will use 1.50 FTE staff to prepare the annual EPA capitalization grant application, the IUP, the Project Priority List (PPL), assess environmental reviews and capacity of each loan recipient, along with conducting financial monitoring and control. Under its partnership contract, Business Oregon will utilize 4.80 FTE necessary to administer contracts to water systems from the PPL. Therefore, a total of 6.30 FTE will be used to administer the overall DWSRF program.

The 2016 WIIN Act provisions provide states three allocation options for this Set-Aside. The Act's options include:

Equal to the sum of any state fees collected and the greatest of \$400,000; 1/5 of one percent of the current fund value; and an amount equal to 4 percent of all grants awarded to the fund under this section for the fiscal year.

For 2023, OHA will plan to utilize the 4 percent option, totaling \$462,400. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 2. Small Systems Technical Assistance:** OHA continues providing technical assistance and related services to small water systems serving 10,000 or fewer people by contracting for these services. Types of assistance may include, but not limited to: (1) Provide cost estimates for conducting feasibility studies to address ECs. (2) Assistance with filling out EC Funding Interest Forms. A total of 0.92 FTE will be associated to these Set-Aside activities.

Typically, a maximum of 2 percent of the annual grant allotments is allowed for this Set-Aside. For 2023, OHA is requesting 2 percent of the allotment, totaling \$231,200. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 3. State Program Management (SPM) – State and County Program Support:**

These funds will continue OHA and contractual support of County drinking water programs and of the Oregon Department of Agriculture to augment the Public Water

System Supervision (Primacy) program. These activities include sanitary surveys, the investigation and resolution of significant non-compliance concerns and adjacent activity. OHA will use 2.58 FTE to conduct direct services and to manage contracts.

Typically, a maximum of 10 percent of the annual grant allotments is authorized for this Set-Aside. For 2023, OHA is requesting 5 percent of the allotment, totaling \$578,000. Because OHA is not allocating the full 10 percent authorized to this Set-Aside, OHA will be “banking” (reserving) the rights to the remaining 5 percent (\$578,000) for future use. For more Set-Aside information, please reference the **Appendix D** section of the IUP.

- 4. Local Assistance & Other State Programs:** Oregon is not allocating FFY2023 BIL-Emerging Contaminants funding to this Set-Aside. This may change in future BIL-Emerging Contaminants grant applications. Similarly, to the SPM Set-Aside noted above, because OHA is not allocating any of the 15 percent authority to this Set-Aside, OHA will be “banking” (reserving) the rights to the entire 15 percent for future use – provided EPA allows States access to this “banked” Set-Aside authority.

The level of Set-Aside funding on a year-to-year basis will continue in collaboration with partner agencies to assure that public water suppliers in Oregon are well trained and knowledgeable of the most current drinking water quality standards and techniques.

Additionally, Set-Aside transfers to the Loan Fund will be performed on an as needed basis to further expedite federal funding timeline requirements.

## **V. Current & Future Years of the Program**

This year’s program represents a continuation of significant initiatives begun in 1997 by OHA, including its partner agencies (e.g., Business Oregon), stakeholder organizations, and service providers as well as public water systems. The main goal of the SRF’s use of BIL-EC funding is to reduce people’s exposure to perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants through their drinking water. New initiatives, strategic proposals, and process improvements are continually being introduced between partnering agencies so our goals and federal crosscutter requirements (e.g., Davis Bacon, Build America, Buy America Act (BABA), American Iron & Steel (AIS), Federal Funding Accountability & Transparency Act (FFATA), etc.) continue to be met.

### **❖ Short-Term Goals**

- Work with water systems to develop and fund projects that address known PFAS contamination in drinking water.
- Work with water systems to develop and fund projects to address known detections of other emerging contaminants (manganese, cyanotoxins) as funding allows.
- Fund feasibility studies in communities that have not yet planned to address

emerging contaminants to evaluate project options, including consideration of ongoing costs anticipated for the operations and maintenance of any installed treatment.

- Operate and manage a DWSRF program in Oregon for eligible community and non-profit non-community water systems to construct needed improvements and meet water security needs.
- Provide 100 % subsidy to projects, prioritizing projects that will address the greatest public health need.
- Develop technical assistance and source protection efforts that sustain and/or improve the operation, maintenance, and management of Oregon’s drinking water systems.
- Evaluate and update financial offerings within the program to ensure requirements with the grant are met while also providing equitable access to needed funds.

❖ **Long-Term Goals**

- Work with water systems to develop and fund projects to address PFAS at water systems that become aware of PFAS contamination through the 5<sup>th</sup> Unregulated Contaminant Monitoring Rule (UCMR5) monitoring, Oregon’s PFAS sampling project, or voluntary monitoring.
- Work with water systems to develop and fund projects to address future detections of other emerging contaminants (manganese, cyanotoxins) as funding allows.
- Administer the DWSRF program in Oregon in a way that protects its revolving nature in perpetuity.
- Support the state’s goal of ensuring Oregon’s water supplies provide safe drinking water by financially contributing to needed water system improvements.
- Increase water system compliance with state and federal drinking water requirements through technical assistance, capacity development and assessment of source water.

❖ **Loan Principal Forgiveness**

A forgivable loan award, also known as principal forgiveness, are loan awards that are forgiven if a project is completed consistent with contract terms. A forgivable loan is like a grant with conditions. EPA characterizes forgivable loan awards as “subsidy” and limits the amount that can be awarded each year. Forgivable loan awards are subject to annual availability based on federal subsidy limitations identified in annual program capitalization grants to the state.

All five years (2022-2026) of BIL-Emerging Contaminants project funding are required to be in the form of 100 percent subsidy. Business Oregon is responsible for ensuring the

subsidy requirements of each DWSRF capitalization grant are met. In the program the removal of a general DWSRF requirement to issue loan will help with discussions with communities and incentivize projects that address emerging contaminants.

❖ **Funding Interest Form (FIF) Process**

OHA and Business Oregon have had a long-standing practice of utilizing a Letter of Interest (LOI) solicitation process to inform, gather, and process (rating and ranking) requests from eligible water systems interested in funding drinking water infrastructure planning, design, and/or construction improvements.

Currently, OHA and Business Oregon have developed a stand-alone Funding Interest Form for the BIL-Emerging Contaminants program. BIL-Emerging Contaminants FIFs will be accepted year-round, but only reviewed, rated, and ranked annually after the March 15 submission deadline. Communities are informed and offered the form by OHA when a detect of an emerging contaminant occurs through OHA's Drinking Water Services. OHA's emerging contaminant specialist, Circuit Riders and Business Oregon's Regional Development Staff are available to help with completing the form.

❖ **Federal Funding Accountability and Transparency Act (FFATA)**

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), ensures that the public can access information on entities and organizations receiving Federal funds. The FFATA Subaward Reporting System (FSRS) is the reporting tool Federal prime awardees (i.e., prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. On March 23, 2011, the EPA released a memo explaining this federal requirement to states and the use of the FFATA Subaward Reporting System (FSRS) tool.

States have the option to apply some Federal Crosscutting Authorities and Federal requirements to all awarded projects, or only the projects and Set-Asides equal to (equivalent to) the annual federal award amount (i.e., 100% of the award and FFATA identified projects). During SFY2023-24, Oregon's DWSRF program has begun applying Federal Crosscutting Authorities to the FFATA identified projects equivalent to the annual federal award amount.

BIL-EC funding does not access revolved funds or state match and is awarded as 100% federal funding for the purposes of FFATA and equivalency. All BIL-EC projects will be subject to FFATA reporting and all applicable federal requirements, including Build America Buy America. Business Oregon works closely with communities to build contingency into the budget of projects to ensure that there is sufficient access to funding to support managing the applicable federal requirements.

In accordance with the EPA September 22, 2014, memo, "Application of Equivalency Under the FFATA," these reporting requirements specific to the Set-Asides relate only to subaward contracted obligations at or above \$30,000 and that only those Set-Aside activities that meet or exceed this amount need to be reported in to the FSRS database.

Specific contract details can be found on the Set-Aside FFATA spreadsheet within the **Appendix A** section of the IUP.

The chart below demonstrates the projects Oregon intends to identify for the purposes of FFATA.

<b>2023 BIL-EC FFATA:</b>			
<b>Applicant</b>	<b>Applicant Number</b>	<b>Project Description</b>	<b>Amount</b>
Burns Water Department 4100153	SD-23-E32	PFAS Feasibility Study	\$ 128,000
Riverstone Mobile Home Park 4100240	SD-23-E20	PFAS Feasibility Study	\$ 19,908
Milton-Freewater, City of 4100522	SD-23-E26	PFAS Feasibility Study	\$ 125,000
Whispering Pines Mobile Lodge 4100223	SD-23-E21	PFAS Feasibility Study	\$ 19,908
Marcola Water District 4100508	SD-23-E31	PFAS Feasibility Study	\$ 65,000
Lakeside Mobile Home & RV Park 4100450	SD-23-E27	PFAS Feasibility Study	\$ 19,908
Rainbow Water District 4100839	SD-23-E07	PFAS Feasibility & Pilot Studies	\$ 1,400,000
Dundee, City of 4100262	SD-23-E30	PFAS Feasibility Study & Future Construction TBD	\$ 695,000
Bend Water Department 4100100	SD-23-E28	PFAS Feasibility Study	\$ 100,000
Myrtle Creek, City of 4100550	SD-23-E29	Cyanotoxins - Autobackwash Equipment at Intake	\$ 750,800
Ashland Water Department 4100047	SD-23-E22	Cyanotoxins - Ozone Treatment	\$ 9,312,747
Set-asides	n/a	n/a	\$ 1,271,600
<b>FFATA Reportable Total:</b>			<b>\$13,907,871</b>
<b>FFY-2023 (BIL-EC) Appropriation:</b>			<b>\$11,560,000</b>

*\*\*Set-Aside contracts (i.e., county partners) of \$30,000 or above will be entered in to the FSRS database.*

❖ **Davis Bacon (DB) Wage Rate Compliance, American Iron & Steel Requirements, and the Build America, Buy America Act (BABA)**

Funding recipients will be made aware of all federal programmatic requirements early on, prior to invitation. Financing contract language and contract clauses are provided to funding recipients to assist with administering the project and will reflect those requirements. The funding recipient (water system) is responsible for ensuring applicable clauses are included in contracts between the water system and contractors with different language (applicable clauses) depending on whether the contract is for professional services (e.g., engineering) or construction activities. For BIL-EC funding Business Oregon works closely with communities to build additional contingencies into the budget of emerging contaminants projects to ensure that there is sufficient access to funding to support managing the applicable federal requirements. Communities may hire third party support with additional funding to manage administration applicable to the federal requirements detailed below:

Davis Bacon (DB) wage rate requirements apply to all construction, alteration and repair of treatment works carried out in whole or in part with assistance made available through the DWSRF. To ensure compliance, applicable DB contract clauses are inserted into all relevant contracts. Recipients of DWSRF funds are briefed on their responsibility to ensure that all relevant DB regulations are adhered to. In addition, Business Oregon

Regional Project Managers will periodically monitor certified payroll documents and other necessary and relevant documents for the adherence to DB regulations. Recipients of DWSRF funds are encouraged to contract with third party individuals or organizations that have demonstrated expertise in the administration of DB rules and regulations. Under the BIL-EC funding additional principal forgiveness is available to any eligible recipient of a construction award to choose to hire such expertise.

American Iron and Steel (AIS) Provisions require DWSRF assistance recipients to use iron and steel products that are produced in the United States. AIS compliance will be met as recipients adhere to procuring domestic goods under Build America Buy America (BABA), unless the community is awarded a BABA waiver to which AIS will still apply. Build America, Buy America (BABA) requires all iron, steel, manufactured products, and construction materials used in a project financed with federal assistance to be produced in the United States. Each recipient targeted to BIL-EC funding will be informed of BABA waivers as applicable.

Construction projects under BIL-EC will be provided language regarding the described requirements above and will be included with assistance agreements. Monitoring of compliance requirements will occur at appropriate intervals to ensure that any issues are addressed with immediacy. Funding is limited as it relates to the number of requests made by water systems, but access to additional BIL-EC funding to adhere to AIS and BABA is available and communicated early on with applicants to be built into budgets to ensure a fully funded project.

❖ **Program Guidelines & Applicant’s Handbook**

The [Drinking Water Handbook](#) (lefthand column of webpage) provides guidance for those interested in applying for and administering awards for infrastructure, SIPP, and DWSP projects. The Handbook serves as both an internal and external resource and is a critical element to ensuring that loan and grant funds are administered in an effective and efficient manner and that regulations and guidelines are administered correctly and uniformly. BIL funding details will be incorporated into the Handbook in 2024.

For more details about the Handbook, visit the link above.

❖ **Operating Agreement (OA)**

The original 1998 DWSRF Operating Agreement between the EPA and OHA was amended in 2016 and effective through 2021. The 2021 amended OA is expected to run through 2026. The OA explains and itemizes the agreed-upon implementation and management of Oregon’s DWSRF program.

OHA and Business Oregon plan to review and amend the current OA with our EPA partners prior to the 2026 expiration.



## **VI. Sources & Uses / State Match**

According to SDWA Section 1452(f)(3)(A), States need to expend all DWSRF funds (i.e., state and federal) in an efficient and as timely as realistically possible to remain compliant with these requirements. EPA policy memos SRF 99-05 and SRF 99-09 and DWSRF regulations at 40 CFR 35.3550(l) clarify that a State must commit all SRF funds (including repayments) to projects within one year of receiving those funds or include in the Intended Use Plan (IUP) a reasonable plan detailing how and when the funds will be used.

The IUP Sources and Uses table is the instrument that demonstrates compliance with the statutory, regulatory and policy requirements for states to identify the uses of all sources of funds in the SRF. EPA Regions are responsible for reviewing the Sources and Uses Table in the Intended Use Plan to ensure that the state has adequately demonstrated its plan for expending all funds in the SRF in a timely and expeditious manner.

### **A. Sources and Uses Table**

Oregon's BIL-EC Intended Use Plan's Sources and Uses table and summaries demonstrates transparency and compliance with these statutes, regulations, and policies as set forth by the requirements noted above. As the table and summaries below illustrates, Oregon's current and projected uses (demand) far outweighs our sources (supply).

See table and summaries below for SFY2023 and 2024 details.

<b>Sources &amp; Uses Table for Oregon BIL-EC Project Funds</b>		<b>SFY 2023</b>	<b>SFY 2024</b>
		<b>7/1/22-6/30/23</b>	<b>(Projected) 7/1/23-6/30/24</b>
Beginning Project Cash Balance (BIL-EC)		\$0	0
Undrawn BIL-EC Federal Funds		\$0	\$8,844,200
Unspent Revenue Bond Balance (N/A)		\$0	0
State Match Balance (N/A, No State Match for EC)		\$0	0
<b>Total Funds Available - Beginning of Year</b>		<b>\$0</b>	<b>\$8,844,200</b>
Repayments from BIL-EC Loans (N/A, Loans are 100% Forgivable)		\$0	0
Estimated Repayments from New/Future Loans (N/A)		\$0	0
<b>Total Repayments</b>		<b>0</b>	
State Match for Current Year (N/A, No State Match for EC)		\$0	0
State Match Bond Proceeds (N/A)		\$0	0
<b>Total State Match</b>		<b>0</b>	
Revenue Bond Proceeds (N/A)		\$0	0
Anticipated BIL-Emerging Contaminants Funding		\$8,844,200	\$10,288,400
Interest Earnings on Invested Funds (N/A)		\$0	0
<b>Total All Inflows</b>		<b>\$8,844,200</b>	<b>\$10,288,400</b>
Estimated Debt Service - Outstanding Revenue Bonds (N/A)		\$0	\$0
Actual Disbursements (From Committed Projects)		\$0	\$0
Projected Disbursements (Projects Pending Contract)		\$0	\$1,669,908
Projected Disbursements (Remaining to Draw, Executed Contracts)		\$0	\$0
<b>Total All Disbursements &amp; Outflows</b>		<b>\$0</b>	<b>(\$1,669,908)</b>
Fundable Projects List (PPL)		\$0	(\$83,162,359)
Fund Balance Reserves		\$0	\$0
<b>Ending Cash Balance</b>		<b>\$8,844,200</b>	<b>-\$65,699,667</b>

## B. Sources & Uses Table Detailed:

### Sources:

- Oregon’s DWSRF was awarded 2022’s BIL-EC Allocation on 9/20/2023. The BIL-EC project total for the 2022 allocation is \$8,844,200.
- Anticipated project funding from the 2023 BIL-EC funding, \$10,288,400, the target of this IUP, has been reflected as a source in the table.
- Non-applicable sources detailed in the table:
  - Loan Repayments: No repayments are anticipated to come back into this program as the funding is not issued as loans, only forgivable loans.
  - State Match: State Match is not a requirement of the BIL-EC Funding.

### Uses:

- Set-Aside Activities: Set-Aside activities are not detailed in the Sources and Uses table. More information about the use of reserved Set-Aside funds explained in Section IV.

- As of February 2024, Business Oregon is not actively under contract for BIL-EC projects. Many systems must perform preliminary engineering to determine needed EC project scopes, as most systems had undetermined proposals for EC projects at the end of 2023.
- \$1,669,908 of the 2022 BIL-EC funding is pending contract, comprised of six EC feasibility studies and one manganese remediation project. BIZOR is currently very closely engaged with the remaining systems on the PPL to contract for the remaining \$7,174,292 prior to 9/20/24.
- The current BIL-EC Project Priority List released December 1, 2023 details that water systems have requested over \$83 million dollars' worth of projects that address ECs.

#### Conclusion:

The program will continue to strive for the timely and expeditious use of funding. The BIL-EC funding program is still in its infancy, and many systems identified as eligible for funding need additional time and support currently to get projects identified and contracts executed. The specialized required focus of this fund requires close coordination, and Business Oregon works closely with OHA as the authority on drinking water contamination to ensure that systems are offered direction and opportunity to address ECs. We expect the program to grow in funding needs, as identified projects are determined through studies funded with BIL-EC.

Potential viable projects on the PPL exceeding \$83 million have submitted a FIF requesting funding. As projects are deemed ready-to-proceed, they will be formally invited to obtain an executed contract for funding. Business Oregon carefully monitors the BIL-EC funding availability balance to ensure projects that address PFAS are prioritized, and adequate funding exists to meet the existing funding obligations.

#### C. See **Appendix C** for complete table details. **State Matching Funds**

Oregon's State Matching fund contributions are managed by Business Oregon. In accordance with [EPA's March 8, 2022 BIL Implementation Memo](#), State Match is not required for any current or future BIL-Emerging Contaminants funding.

### **VII. Disadvantaged Community Program**

Awards and subsidy provided to disadvantaged communities are tracked by Business Oregon. For the DWSRF, EPA tasks each state with establishing a definition of "disadvantaged community." Disadvantaged community, under the SDWA section 1452(d), means the service area of a public water system that meets certain affordability criteria. For Oregon's DWSRF the following criteria are used by OHA to determine disadvantaged community status:

- **Median Household Income (MHI) below the state average:** A disadvantaged community is a public water system that has a service area with a MHI below the state average.

As part of the FIF rating and ranking process, OHA assesses the MHI of each water system's service area to determine "disadvantaged" status under the DWSRF program. MHI is determined using the most recent American Community Survey (ACS) 5-year estimates available. A minimum of 25% of the project funding under the BIL-EC program must be awarded to disadvantaged communities.

OHA and Business Oregon are currently working with EPA contractors within SFY-24 to review the current disadvantaged community definition it uses to determine disadvantaged status. The program, with the new support from contractors, hopes to understand if there are current gaps in the current method of targeting communities in need of affordable financing. This work is still very preliminary and may be ongoing into SFY2025. Additional updates and information regarding the research and improvements to the disadvantaged definition and project rating criteria will be shared in upcoming IUP's. The current definition of disadvantaged will be utilized for meeting the 25% requirement of the 2023 BIL-EC funding.

Visit OHA's [Project Ranking and Disadvantaged Status webpage](#) for more details and updates.

### **VIII. Asset Management**

OHA has developed a comprehensive Asset Management Implementation Plan as part of its overall Capacity Development Strategy. Plan elements include education, training and technical assistance to water systems in an effort to encourage incorporation of [Asset Management](#) into routine operational programs. Water systems are encouraged to review the educational materials and resources provided on OHA's website under [Capacity Development](#) and take advantage of free trainings provided by partner organizations (e.g., Rural Community Action Council, Environmental Finance Center, American Water Works Association, etc.) which are listed on OHA's training opportunities webpage. These materials offer important insights on best management practices, how to save money while being organized, and how to forecast for future infrastructure improvements. OHA's Circuit Rider is also available to provide technical assistance in developing asset management plans. Activities encouraging asset management will be funded through the Local Assistance Set-Aside: Capacity Development Program.

In addition to the activities described above, water systems are also encouraged to apply for the SIPP program (reference Section IV above), which includes creation of Asset Management Plans as one of the eligible funding activities.

### **IX. Fund Linkage between DWSRF and CWSRF**

In accordance with 40 Code of Regulations (CFR) part 35.3530(3)(iii)(c), a state may transfer an amount equal to 33 percent of an awarded capitalization grant between SRF programs. To date, Oregon has not transferred funds between the Drinking Water and the Clean Water State Revolving Fund programs, nor does it plan to this grant cycle.

## **X. Drinking Water State Revolving Fund Projects**

### **A. Project Eligibility, Rating & Ranking Process**

For 2023 BIL-Emerging Contaminants funding, OHA identified water system projects and accepted new [Funding Interest Forms \(FIF\)](#) from water systems interested in funding that were not initially targeted by OHA.

In Oregon, the unregulated contaminants listed on the EPA's Contaminant Candidate Lists 1 through 5 most commonly found at the entry point are PFAS and Manganese. Since cyanotoxins are not regulated at the federal level, and can pose a significant public health risk, systems with cyanotoxin detections at the intake were included as well for identifying eligible water systems for potential funding. Once OHA identifies a water system with a PFAS, manganese, or cyanotoxin detection, OHA sends an email and/or letter to the water system with information about the BIL-Emerging Contaminants funding and directs them to fill out a Funding Interest Form (FIF) if interested.

For details, see Section III above or **Appendix B**, Project Selection Methodology. OHA anticipates that this process will evolve as we move into future years of BIL-Emerging Contaminants funding.

Business Oregon will be working with OHA's identified water systems for 2023 funding to determine an eligible project scope that will address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances (PFAS). This work is performed by funding feasibility studies with BIL-EC funding to perform preliminary engineering and the following:

- Analysis of project feasibility (e.g., engineering, regulatory, legal, et cetera).
- Analysis of alternatives for drinking water projects to address the emerging contaminant within the water system and recommended options, which will include but is not limited to, connecting to a nearby water system, developing a new water source and installing treatment.
- Estimate of up-to-date project costs for each alternative including material, labor, contingency budget, and other expenses.
- Design and/or construction timeline.
- Operational feasibility analysis including identification of expected changes in costs for ongoing operation, maintenance, and long-term replacement of the improvements.

The project scope will be confirmed by OHA as eligible with support and concurrence from EPA. Business Oregon will then manage awarded projects and determine that available BIL-EC funding will meet the needs of the water systems.

### **B. Project Selection Criteria – Rating and Ranking, By-Pass**

EPAs DWSRF Interim Final Rule 40 CFR Section 35.3555 (c)(1) suggests that the IUP must include a priority system for ranking individual projects for funding that is detailed and understandable.

Oregon's infrastructure, DWSP, SIPP program, and BIL-Emerging Contaminants funding rating criteria are robust and meet this requirement. In summary, BIL-EC rating

criteria is based on the water system's size, whether the project is to address PFAS, level/concentration of unregulated contaminant detected, and community affordability factors. More information related to OHA's BIL-Emerging Contaminants funding rating form and detailed criteria is available in **Appendix A**.

Due to increased demand on the DWSRF funds, BIL-EC funding will be unable to address all water systems needs and systems currently on the BIL-EC PPL will be contacted in the order they have been ranked with prioritizing projects that have scored the highest. For FY2023, all systems on the BIL-EC PPL were contacted and offered funding for preliminary engineering if not previously performed. Systems that perform preliminary engineering shall identify potential project scopes to address confirmed ECs. As systems identify project scopes that will require design and construction funding, Business Oregon will communicate this closely with OHA and contracts shall be amended to include additional project activities. Projects that have requested funds that exceed the available BIL-EC funding may be partially funded and then targeted for additional BIL-EC grants anticipated to be received through 2026 or supported by regional staff with information on Base DWSRF or BIL-General Supplemental program funding. The goal of the funding process currently is to guide systems from project development to eventual mitigation of an EC issue.

In the process of determining whether to formally invite a water system to move forward with funding, several topics are discussed with the system including (but not limited to) if the system has demonstrated a readiness-to-proceed, anticipated project cost compared to remaining fund availability, or whether the project has been funded by other state or federal sources. If the project is not ready to proceed or if the water system requests to be passed on for funding, the program staff implements a "by-pass" procedure by documenting the communication and proceeds to contact the next highest ranked project.

Readiness-to-proceed factors include but are not limited to:

- If the applicant is working with an engineer on the project.
- If the applicant currently has planning documentation for the project scope, which can be obtained with funding from this BIL-EC source.
- Detailed cost estimates have been developed, if they include additional costs from federal requirements, and if the funding available is able to cover that amount requested.
  - Available funding is clearly discussed with the applicant and additional BIL-EC funding is considered for subsequent project needs. Contingency budget line items are built into the application to ensure federal requirements are considered.
  - Obtaining cost estimates for BIL-EC has also been supported by the Circuit Rider Program.
- Permits, regulatory processes, feasibility, or required easements or land acquisition can add uncertainty to the project and impact timeframes.
- Systems are not required to install treatment for ECs, some communities may voluntarily opt to further examine the extent of perfluorinated alkylated substances (PFAS) in the system prior to completing a construction project.

This is an ongoing process, and systems are provided several opportunities to work with program staff to obtain information on funding. Unfunded Projects may remain on the PPL for up to two years from the approval of the IUP of the awarded federal grant their projects were targeted for, ensuring time available to work on project development if needed. Additional by-pass information can be provided on request.

Finally, to comply with provisions of the Bipartisan Infrastructure Law (BIL), Oregon will assure at least 25% of BIL-Emerging Contaminants funding will be used to assist disadvantaged communities or those that serve 25,000 or fewer people. If it is not at the 25% mark, then “only” these disadvantaged systems will be considered until this federal requirement is met. Oregon expects to meet this requirement. Currently 19 out of 28 systems on the BIL-Emerging Contaminants PPL meet Oregon’s current affordability criteria to be defined disadvantaged.

## **XI. Public Reviews & Comments**

### **❖ Process**

The public has been invited to review and comment on Oregon’s proposed FFY2023 IUP of the BIL-Emerging Contaminants grant application. If comments are received and it is determined that our IUP must be amended, we will notify the EPA Region 10 office immediately.

According to the SDWA’s Federal Register Interim Final Rule, Section “O. Meaningful Public Review of the IUP (40 CFR 35.3555 (b)),”

➤ *“This interim final rule does not include specific requirements as to what constitutes “meaningful public review” of the IUP. Due to the variation among States, no single approach will work under all conditions.”*

EPA interprets the above language to provide States the ability to determine what is appropriate for meeting this requirement provided an effort is made to provide the public an opportunity to make comments. The result is a more rapid process that also reduces program costs.

Below is a list of resources OHA uses when posting notices for public comments related to our annual IUP and our PPL. List includes:

- DWSRF (Base) webpage, <http://healthoregon.org/srf>. Reference Project Priority Lists and Public Notices webpage.
- BIL webpage, <http://oregon.gov/bil>
- DWS main website front page, <http://healthoregon.org/dwp>
- Orange postcard mailings have been replaced with [OHA's GovDelivery](#) email messaging system to public water systems and other interested parties throughout Oregon.
- Publication of “Pipeline” Newsletter includes permanent information about policy, <http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Operations/Pages/pipeline.aspx>
- Correspondence with State, Federal, and private partnerships.

- Public comment responses to IUPs are available on [OHA's IUP webpage](#) following the mandated 30-day publication and DWSRF program staff have time to review comments received and prepared public responses.

Public Notice materials can be found in **Appendix E** of the IUP.

◆ End of Summary



## **APPENDIX A: Required Documents**

- Attorney General Certification
- 2022-23 BIL-Emerging Contaminants PPL
- BIL-Emerging Contaminants Rating Form & Guidance
- FFATA Set-Aside Reporting Spreadsheet



DEPARTMENT OF JUSTICE

Justice Building  
1162 Court Street NE  
Salem, Oregon 97301-4096  
Telephone: (503) 378-6002

July 6, 2023

**SENT VIA EMAIL:** samina.t.panwhar@oha.oregon.gov

Samina Panwhar  
Manager, OHA – Drinking Water Services  
800 NE Oregon Street, Suite 640  
Portland, OR 97232

RE: Attorney General Certification for 2023 DWSRF Capitalization Grant Application  
DOJ File No.: 443709-GH0203-23

Dear Ms. Panwhar:

I, Ellen F. Rosenblum, as the Attorney General for the State of Oregon, hereby certify that for the purposes of the state's application for capitalization grants for its Drinking Water State Revolving Fund (DWSRF) program:

1. The authority establishing the DWSRF program and the powers it confers are consistent with Oregon law.
2. The State of Oregon may legally bind itself to the terms of the capitalization grant agreement.
3. The DWSRF program will be administered by an instrumentality of the State of Oregon that is authorized to: enter into capitalization grant agreements with the United States Environmental Protection Agency; accept capitalization grant awards made under 42 USC § 300j-12(a)(1)(A); and otherwise manage the Fund in accordance with the requirements and the objectives of the Safe Drinking Water Act and applicable federal rules.

Dated this 6th day of July, 2023.

---

LISA M. UDLAND  
Deputy Attorney General  
On behalf of  
ELLEN F. ROSENBLUM  
Attorney General  
Pursuant to ORS 180.130

# 2023

**Bipartisan Infrastructure Law (BIL) Emerging Contaminants (EC)**  
*(100% principal forgiveness - 25% for disadvantaged communities or water systems serving fewer than 25,000 people)*  
*(Zero match requirement)*  
**Combined Project Priority List (PPL) - 2022 & 2023**

**2022 BIL-EC Allotment = \$9,940,000**  
**2023 - 2026 BIL-EC Annual Allotments = \$11,493,000**

**Please see footnotes below for important PPL and project information**

**2022 Available Amount for EC Projects = \$8,844,200**  
**2023 Available Amount for EC Projects = \$TBD**

Applicant	Applicant Number	County	Population	BizOR. RDO / RPM	Project Description (PD)**	Project Rating (≤ 90)	Amount Requested	BIL EC Fundable Amount (100% subsidy)	ANTICIPATED BIL EC Rates & Terms	Disadvantaged Community	BIL-EC Grant Award Targets	Quarter & SFY Added to PPL
Burns Water Department 4100153	SD-23-E32	Harney	2,835	Feather Sams-Heusties / Shanna Bailey	PFAS Feasibility Study	88	\$128,000	\$128,000	See Below for Notes	YES	2023	1Q2024
Riverstone Mobile Home Park 4100240	SD-23-E20	Lane	168	Laura Engstrom / Tracy Loomis	PFAS Feasibility Study	85	\$19,908	\$19,908	See Below for Notes	YES	2023	1Q2024
Periwinkle MHP 4100029	SD-23-E01	Linn	55	Laura Engstrom / Tracy Loomis	PFAS (TBD)	80	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Milton-Freewater, City of 4100522	SD-23-E26	Umatilla	7,145	Ryan DeGroff / Shanna Bailey	PFAS Feasibility Study	76	\$125,000	\$125,000	See Below for Notes	YES	2023	1Q2024
Tivoli MHP 4101003	SD-23-E02	Lane	94	Laura Engstrom / Tracy Loomis	PFAS (TBD)	73	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Garibaldi Water System 4100311	SD-23-E03	Tillamook	802	Melanie Olson / Melinda Hautala	PFAS Feasibility Study	73	\$200,400	\$200,400	See Below for Notes	YES	2022	3Q2023
Whispering Pines Mobile Lodge 4100223	SD-23-E21	Linn	90	Laura Engstrom / Tracy Loomis	PFAS Feasibility Study	70	\$19,908	\$19,908	See Below for Notes	NO	2023	1Q2024
Albany Trailer and RV Park 4100004	SD-23-E04	Linn	130	Laura Engstrom / Tracy Loomis	PFAS (TBD)	68	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Marcola Water District 4100508	SD-23-E31	Lane	600	Laura Engstrom / Tracy Loomis	PFAS Feasibility Study	68	\$65,000	\$65,000	See Below for Notes	NO	2023	1Q2024
Lakeside Mobile Home & RV Park 4100450	SD-23-E27	Klamath	110	Larry Holzgang / Tawni Bean	PFAS Feasibility Study	65	\$19,908	\$19,908	See Below for Notes	NO	2023	1Q2024
Lakewood Utilities 4101097	SD-23-E05	Marion	289	Arthur Chaput / Michelle Bilberry	PFAS Feasibility Study	65	\$19,908	TBD	See Below for Notes	NO	2022	3Q2023
Tualatin Valley Reg Traing Ctr 4194941	SD-23-E06	Washington	300	Jeff Hampton / Matt Mattia	PFAS (TBD)	65	TBD	TBD	See Below for Notes	NO	2022	3Q2023
Rainbow Water District 4100839	SD-23-E07	Lane	6,300	Laura Engstrom / Tracy Loomis	PFAS Feasibility & Pilot Studies	64	\$1,400,000	TBD	See Below for Notes	YES	2022	3Q2023
Dundee, City of 4100262	SD-23-E30	Yamhill	3,356	Arthur Chaput / Michelle Bilberry	PFAS Feasibility Study & Future Construction TBD	61	\$695,000	\$695,000	See Below for Notes	NO	2023	1Q2024
Springfield Utility Board 4100837	SD-23-E08	Lane	62,100	Laura Engstrom / Tracy Loomis	PFAS (TBD)	60	\$27,884,578	TBD	See Below for Notes	YES	2022	3Q2023
Bend Water Department 4100100	SD-23-E28	Deschutes	77,704	Capi Lewis / Gail Nelson	PFAS Feasibility Study	60	\$100,000	\$100,000	See Below for Notes	NO	2023	1Q2024
Independence Water System 4100399	SD-23-E23	Polk	10,300	Arthur Chaput / Michelle Bilberry	PFAS Feasibility Study	48	\$179,100	\$179,100	See Below for Notes	YES	2023	1Q2024
Molalla, City of 4100534	SD-23-E24	Clackamas	10,298	Jeff Hampton / Matt Mattia	PFAS Feasibility Study	40	\$19,908	\$19,908	See Below for Notes	NO	2023	1Q2024
Sunset Water System Inc 4100069	SD-23-E09	Marion	140	Arthur Chaput / Michelle Bilberry	Manganese treatment system	30	TBD	TBD	See Below for Notes	YES	2022	3Q2023

Rockwood PUD 4100668	SD-23-E10	Multnomah	65,443	Jeff Hampton / Matt Mattia	Manganese (TBD)	28	\$22,162,169	TBD	See Below for Notes	YES	2022	3Q2023
Gresham, City of 4100357	SD-23-E11	Multnomah	73,932	Jeff Hampton / Matt Mattia	Manganese (TBD)	28	\$20,000,000	TBD	See Below for Notes	YES	2022	3Q2023
Tri-City JW&SA 4100549	SD-23-E12	Douglas	3,500	Christopher Frazier / Tawni Bean	Cyanotoxins: develop emergency intertie w/ Riddle	21	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Cottage Grove, City of 4100236	SD-23-E13	Lane	10,005	Laura Engstrom / Tracy Loomis	Cyanotoxins (TBD)	20	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Gates, City of 4100317	SD-23-E14	Marion	500	Arthur Chaput / Michelle Bilberry	Cyanotoxins (TBD)	18	TBD	TBD	See Below for Notes	YES	2022	3Q2023
Josephine County Parks – Lake Selmac 1 4190186	SD-23-E15	Josephine	50	Marta Tarantsey / Tawni Bean	Cyanotoxins - Design Work for Replacing Existing Treatment Plant	15	\$60,025	\$60,025	See Below for Notes	YES	2022	3Q2023
Myrtle Creek, City of 4100550	SD-23-E29	Douglas	3,490	Christopher Frazier / Tawni Bean	Cyanotoxins - Autbackwash Equipment at Intake	14	\$750,800	\$750,800	See Below for Notes	YES	2022	1Q2024
Ashland Water Department 4100047	SD-23-E22	Jackson	20,700	Marta Tarantsey / Tawni Bean	Cyanotoxins - Ozone Treatment	13	\$9,312,747	\$9,312,747	See Below for Notes	YES	2022	1Q2024
Jefferson, City of 4100408	SD-23-E19	Marion	3,348	Arthur Chaput / Michelle Bilberry	Cyanotoxins: develop backup source	11	TBD	TBD	See Below for Notes	NO	2022	3Q2023

\$83,162,359      \$11,547,796

Total Req      Total BIL-EC Fundable Subsidy

**FOOTNOTES:**

This PPL contains a list of systems OHA has recommended for 2022 & 2023 Bipartisan Infrastructure Law (BIL) Emerging Contaminants (EC) funding. The BIL-EC grant language requires states to provide 100% of the capitalization grant amount, minus set-asides taken, as principal forgiveness and/or grants. Funding amounts detailed above are subject to change based on project identification, approved by OHA and EPA.

BIL-EC grants contain the following provision: "Provided further, that funds provided under this paragraph in this Act shall be to address emerging contaminants in drinking water with a focus on perfluoroalkyl and polyfluoroalkyl substances through capitalization grants under section 1452(t) of the Safe Drinking Water Act for the purposes described in section 1452(a)(2)(G) of such Act".

BIL-EC funding targets projects or activities that otherwise would be eligible under the "Base" DWSRF funding program but the primary purpose must be to address and/or mitigate people's exposure to EC in drinking water with priorities on perfluoroalkyl and polyfluoroalkyl substances (PFAS).

OHA-DWS rated and ranked the systems on this PPL using a scoring system with rating criteria based on the contaminant present/concentration and water system size. PFAS is prioritized per EPA guidance in the scoring, then a non-regulated contaminant over a health advisory, and lastly detection of a non-federally regulated contaminant in raw water only.

The BIL also requires that not less than 25% of funds provided through the DWSRF Emerging Contaminants Funding be provided as grants and forgivable loans to disadvantaged communities or public water systems serving fewer than 25,000 people. Assessing community affordability and disadvantaged status is determined using SDWRLF base program criteria. This serves two purposes 1) Prioritizes communities with socioeconomic factors affecting community affordability by ranking them higher on the BIL-EC PPL, and 2) Designates which PWS are considered disadvantaged to ensure meeting required target of 25% of BIL EC funding going to disadvantaged communities or PWSs serving less than 25,000 population. A "Disadvantaged Community" under the DWSRF is a public water system that has a service area with a Median Household Income (MHI) below the state MHI. MHI is determined using the most recent American Community Survey (ACS) 5-year estimates available.

Business Oregon, following the ranking order on this list, will engage with systems on project identification to address the Emerging Contaminant identified by OHA. Eligible systems will be given opportunity to receive BIL-EC funding, but if a readiness to proceed is not demonstrated in a timely manner Business Oregon may utilize a "Bypass Process" if the lower-tiered projects are ready to move forward. BIL-EC grant funds must be disbursed by Oregon within three years of receiving the award. Initial use of BIL-EC funding will be to assist the systems with funding feasibility studies, if not already obtained, to plan and identify eligible projects to address their EC concerns.

Additional Funding Needs: If funding allows, projects that require additional funding beyond their BIL-EC allocation may be considered for additional funding resources through Oregon's "Base" DWSRF, BIL-General Supplemental, or another Business Oregon funding program (if eligible).

## Emerging Contaminants Funding Rating Form & Guidance Drinking Water State Revolving Fund

**\*\*For Program Use ONLY\*\***

- 1) **Emerging Contaminants Funding:** For a water system to be eligible for funding under this appropriation, it must be otherwise DWSRF eligible and the primary purpose must be to address emerging contaminants in drinking water. Given the clear Congressional intent that these funds focus on projects addressing perfluoroalkyl and polyfluoroalkyl substances (PFAS), EPA expects states to actively solicit and prioritize PFAS-focused projects. States, however, have the flexibility to fund projects for any contaminant in any of EPA's [Contaminant Candidate Lists](#). For example, EPA also encourages states to consider using these funds to address perchlorate as well as contaminants that have higher levels of occurrence or health concerns.

If eligible for funding, the water system will be scored on the following criteria (max 90 pts.):

- a. **Water System Size:** Priority will be given to systems serving < 500 people (5 pts), 500 to 3,300 people (3 pts), or 3,301 to 9,999 people (1 pts).
- b. **PFAS:** Priority will be given to water systems with PFAS detections (30 pts).
- c. **Unregulated Contaminant Detections:** priority will be given to water systems with an unregulated contaminant detection above a drinking water HAL or proposed MCL in finished water (30 pts), water systems with an unregulated contaminant detection at or below a drinking water HAL but above a Secondary Maximum Contaminant Level (SMCL), if applicable, in finished water (15 pts), or water systems with an unregulated contaminant detections including but not limited to detections in raw water or unqualified/unconfirmed sample results (5 pts). For purposes of this rating, "finished water" means representative of water people are drinking and "raw water" means non-potable water prior to treatment including watershed sample results. An example of unqualified/unconfirmed sample results may be J-flagged PFAS detections. *Note: 30 point criteria updated 3/21/23 to include "or proposed MCL".*
- d. **Community Affordability:** 25 points max. See base project rating criteria. **\*\*GIS SPECIALIST\*\***

Water systems eligible for emerging contaminants funding will be rated and ranked using the Emerging Contaminants Funding Rating Summary sheet included on the next page.

**Ineligible Activities:** If EPA has promulgated a National Primary Drinking Water Regulation (NPDWR) for a contaminant, then a project whose primary purpose is to address that contaminant is not eligible for funding under this appropriation, with the PFAS exception explained below. For example, a project for which the primary purpose is to address arsenic or nitrate in drinking water is not eligible because arsenic and nitrate are regulated under the NPDWRs.

EPA expects to establish a NPDWR for PFOA and PFOS. The Agency is also evaluating additional PFAS and groups of PFAS. Given stated Congressional intent of this appropriation, PFAS-focused projects will be eligible for funding under this appropriation regardless of whether EPA has established a NPDWR for that particular PFAS or group of PFAS.

Public water systems that cannot provide data indicating they have detected an emerging contaminant are not eligible for this funding at this time. EPA does allow funding for preventative projects so this may change in the future.

# Drinking Water State Revolving Fund

## EMERGING CONTAMINANTS FUNDING RATING SUMMARY

**PWS NAME:**

**PWSID#:**

**COUNTY:**

**LOI#:** SD-       -

**CONTAMINANT TO ADDRESS:**

**ELIGIBLE PUBLIC WATER SYSTEMS**

- Community Water System** – (Public or Private Ownership)
- Non-Profit Non-Community Water System** – (Public or Private Ownership)
- INELIGIBLE**

**ELIGIBLE ACTIVITIES to address a detected emerging contaminant (informational only; not a complete list)**

- **Planning and/or design**
- **Construction of new treatment facility or upgrade** to existing treatment facility
- **Development of a new source** (i.e., new/replacement well or intake)
- **Consolidation** with another water system that does not have emerging contaminants present or has removal capability
- **Pilot testing** for treatment alternatives
- **Creation of a new community water system** to address unsafe drinking water provided by individual (i.e., privately-owned) wells or surface water sources

**INELIGIBLE ACTIVITIES**

- Project purpose is to address a regulated contaminant.** If so, describe:
- Public water system has not detected an emerging contaminant.** If so, describe:
- Other.** Describe:

**Exclusions? Is the System Suspended/Debarred?** – See [SAM.gov using Login.gov](#)  Yes  No  
*(DWSRF Program Coordinator will sign-in and research for exclusions)*

**Evaluation Criteria:**

Criteria	Max Pts.	Score	Description
Water System Size	5		<input type="checkbox"/> 5 points to systems serving < 500 people. <input type="checkbox"/> 3 points to systems serving 500 to 3,300 people. <input type="checkbox"/> 1 point to systems serving 3,301 to 9,999 people.
PFAS	30		30 points for water systems with PFAS detections.
Unregulated Contaminant Detections	30		<input type="checkbox"/> 30 points for an unregulated contaminant detection above a drinking water HAL or proposed MCL* in finished water. <input type="checkbox"/> 15 points for an unregulated contaminant detection at or below a drinking water HAL (but above an SMCL, if applicable) in finished water. <input type="checkbox"/> 5 points for other unregulated contaminant detections including but not limited to detections in raw water or unqualified/unconfirmed sample results.
Community Affordability	25		25 points max. See base project rating criteria <b>(scored by GIS Specialist)</b>
<b>Total</b>	<b>90</b>		

**RATED BY:**

**DATE:**

\*\*\*Short project summary is not required\*\*\*

*\*Revised 3/21/23 to include "or proposed MCL"*

**SFY-2024 DWSRF FFATA Reportable *Set-Aside* Contracts ≥\$30,000 ONLY**

Contracts		Contract # (if avail.)	Fiscal Yr. - not to exceed Contract Amount	FSRS Req?	Reason if not Req?
Circuit Rider (Civil West)		174190-1	\$ 975,000	No	Vendor Contracts are N/A
Counties* 7 of 26 contracts (Annual)	Clackamas	TBD	\$ 60,416	Yes	
	Deschutes	TBD	\$ 36,693	Yes	
	Jackson	TBD	\$ 43,289	Yes	
	Josephine	TBD	\$ 33,038	Yes	
	Lane	TBD	\$ 51,409	Yes	
	Linn	TBD	\$ 37,637	Yes	
	Marion	TBD	\$ 44,711	Yes	
Dept. of Agriculture		169551	\$ 25,657	No	Federal entities are N/A
OAWU (\$5,965/class)		158366	\$ 596,500	No	Vendor Contracts are N/A
Needs Survey (HBH)		162617-1	\$ 233,558	No	Vendor Contracts are N/A
DWSP (Grants)	<i>Business Oregon to Manage (grants ≥\$25,000)</i>			Yes	
<b>Only County Set-Aside FFATA TOTALS:</b>			<b>\$ 307,193</b>		

PHD-PE50 Disclaimer:

All FSRS reported *Set-Aside* contracts shown above are to be associated to CFDA: 66.468 and FAIN: 98009022 & 98009023.

FFATA reporting threshold from March 1, 2011 through September 30, 2015 was \$25,000. Since October 1, 2015, the threshold became \$30,000 (Per OMB Guidance issued on 08/27/10; Prime Grant Recipient FFATA reporting threshold, remains at \$25,000).

## **APPENDIX B: Supporting Documents**

- 2023 Grant Allotment Use Summary – BIL-Emerging Contaminants
- Project Selection Methodology – BIL-Emerging Contaminants (2023)
- Cost Allocation & Other Payroll Expense Letters (3)



**The 2023 State of Oregon's (BIL Emerging Contaminants) DWSRF Program  
EPA Grant Allotment Use Summary**

<b>GRANT APPLICATION TOTALS</b>			
FFY-2023 appropriation (\$11,493,000) + FFY-2022 reallocated funds (per EPA 11-28-23 memo) (\$67,000)			
Combined Total = \$11,560,000			
<b>Program use of Grant Funding</b>	<b>Federal Funds</b>	<b>Percent of Grant*</b>	<b>State Match Funds</b> (Not applicable for BIL-EC Funding)
<b>Project Loans for Water Systems:</b> (AC:0254) EPA Site Project Code: DA <b>CARVE-OUTS for:</b> • "Green Project Reserve" (GPR) projects ***No longer a mandatory requirement - Optional*** • "Principle Forgiveness" (additional subsidy) projects requires: <b>100% of FFY2023 BIL-EC funding to be subsidized with 25% to disadvantaged communities or PWS serving less than 25,000 people.</b>	\$10,288,400	89.00%	\$0
<b>Set-Aside Activities: (maximum = 31%)</b> <b>1 - Administrative Exp.</b> (Business OR. & OHA) (1/5% of 1% of fund value, 4%, or 400K - per WIIN) (up to 4%) (AC: 0250) EPA Site Project Code: DD	\$462,400	4.00%	\$0
<b>2 - Small System Technical Assistance</b> (CR) (up to 2%) (AC:0251) EPA Site Project Code: DE	\$231,200	2.00%	\$0
<b>3 - State Program Management</b> (County and DOA support for sanitary surveys, non-compliance resolution & other water system support activity) (up to 10%) (AC:0253) EPA Site Project Code: DF	\$578,000	5.00%	\$0
<b>4 - Local Assistance &amp; Other State Programs</b> (up to 15%) EPA Site Project Code: DGD • IMPLEMENTATION OF PROTECTION = Zero (\$0) allocated (0%) for 2023 (DEQ, Tech Asst, GIS, Training & Support) (AC:0252) EPA Site Project Code: DGC • WATER SYSTEM CAPACITY DEVELOP = Zero (\$0) allocated (0%) for 2023 (Technical, Managerial, Financial skill building assistance to Water System Operators) (AC:0255) EPA Site Project Code: DGB • DRINKING WATER SOURCE PROTECTION = Zero (\$0) allocated (0%) for 2023 (Loans & grants for Source Protection Projects paid out of the DWSP Fund) (AC:0256)	\$0	0.00%	\$0
<b>TOTAL USE OF GRANT FUNDS</b>	<b>\$11,560,000</b>	<b>100.00%</b>	<b>\$0</b>

\*\*Disclaimer\*\* ≥15% of the SDWRLF monies, "must" be awarded to Small Public Water Systems (10,000 or fewer people) each year. If it's not at the 15% mark, then "only" these small systems will be considered until this federal requirement is met.

On December 2016, the Water Infrastructure Improvement for the Nation (WIIN) Act was developed and included key provisions. One of these key provisions includes, Subtitle A (§2103) for "Safe Drinking Water" which states: SDWA §1452(g)(2) Set-aside language is revised to remove the overmatch for the 10% set-aside and change the 4% administrative set-aside to be "equal to the sum of any state fees collected and the greatest of \$400,000, 1/5% of the current fund value (2023 Total Net Position = \$330,366,751), and an amount equal to 4% of all grants awarded to the fund under this section for the fiscal year." These funds will also be subtracted from the Loan Fund to balance the increased Set-aside amount when applicable.

On October 2018, the America's Water Infrastructure Act (AWIA) provided provisions to the existing SDWA §2015 (c) for "Assistance for Disadvantaged Communities." The Section requires states to use at least 12% (from 6% to 12% per BIL Imp Memo), but no more than 35% of the capitalization grant amount for additional subsidy for state-defined Disadvantaged Communities.

Although authorized to request reserved set-asides under EPA's DWSRF Interim Final Rule, 40 CFR, Section 35.3540 (d), **Oregon will not be exercising this option with our 2023 BIL Emerging Contaminants grant request. Instead Oregon will be banking additional 5% (\$578,000) BIL-EC SPM authority.**

Subject:	BIL-Emerging Contaminant funding (BIL-EC) project list development and overall process	Orig Date:	4-2023
Unit + init:	PPC and TS	Revised date:	2-2024
Purpose & Scope: To document the method used to identify eligible water systems for BIL-Emerging Contaminant funding (BIL-EC), the process for rating & ranking those systems for the creation of a BIL-EC Project Priority List (PPL), and to determine the roles and responsibilities of Oregon Health Authority-Drinking Water Services (OHA-DWS) and Business Oregon (BizOR) in the process of funding BIL-EC projects.			

Procedure/Process:

1. OHA-DWS identifies public water systems (PWS) eligible for BIL-EC funding. In Oregon, the unregulated contaminants listed on the EPA's Contaminant Candidate Lists 1 through 5 most commonly found at the entry point are PFAS and Manganese. Since cyanotoxins are not regulated at the federal level and can pose a significant public health risk, PWSs with cyanotoxin detections are also eligible.
  - a. For PFAS, any PWS with a detection is eligible for funding. This includes systems that sample voluntarily and submit data to OHA-DWS, systems that sampled as part of the 2021 OHA PFAS sampling project conducted with DEQ, and systems sampling under UCMR5.
  - b. For manganese, systems with Mn above the SMCL are eligible.
  - c. For cyanotoxins, systems that have had a detection of total microcystins or cylindrospermopsin at the intake or entry point are eligible.
2. Once a PWS is identified with the criteria above, OHA-DWS sends email/letter to water systems targeted for EC funding directing them to fill out a Funding Interest Form (FIF) located on BizOR's webpage and submit to BizOR if interested. **FIFs must be submitted by March 15 each year.**

**Note:** It is expected most, or all projects will not yet have preliminary engineering or design work done. Feasibility study cost estimates must be provided with FIF submittal, obtained through either the water system's engineer or the OHA-DWS circuit rider.
3. OHA-DWS reviews the submitted projects for eligibility and rates and ranks the FIFs using a scoring system. Rating criteria is based on the contaminant present/concentration, system size, and community

affordability, not the project to address the emerging contaminant. However, any BIL-EC funded project must address the emerging contaminant. PFAS is prioritized per EPA guidance in the scoring. Priority is given to an unregulated contaminant detection over a health advisory level or proposed MCL in finished water, then an unregulated contaminant detection at or below a drinking water HAL (but above an SMCL, if applicable) in finished water, and lastly detections of other unregulated contaminants including but not limited to detections in raw water or unqualified/unconfirmed sample results.

PWS are also scored on community affordability, and disadvantaged status is determined using the same criteria as SDWRLF base program projects ranking. This serves two purposes 1) Prioritizes communities with socioeconomic factors affecting community affordability by ranking them higher on the BIL-EC PPL, and 2) Designates which PWS are considered disadvantaged to ensure meeting required target of 25% of BIL EC funding going to disadvantaged communities or PWSs serving less than 25,000 population. **Rating and ranking occurs by May 1 each year.**

4. **PPL is created by OHA-DWS by May 1 each year.** The BIL-EC PPL is provided to BizOR by OHA-DWS and posted for a 10-day public comment period.
5. OHA-DWS applies for funding using the BIL-EC PPL by **December 1 each year.**
  - a. Project title (example) is “XX system PFAS remediation – scope.”
  - b. If needed, OHA-DWS ranks the projects/systems.
  - c. OHA-DWS and BizOR identify potential funding awards.
6. IUP approved by EPA and funding received.
7. BizOR will start inviting application after the grant application is submitted to EPA. If a higher ranked system is no longer interested in BIL funding, the next system on the list will be contacted.
8. BizOR provides FIF to OHA-DWS if needed for review of project eligibility if alternatives to the FIF are proposed or if the PWS completes feasibility study or design and is ready to move to construction.  
BizOR enters into contract with system (for feasibility design, or construction).
9. Funding is disbursed based on costs incurred.

10. When project details (elements) and associated costs are developed, associated documents will be forwarded to OHA-DWS and EPA for comment opportunity. Adequacy of project budget needed to proceed will be assessed.
  - a. If adequate budgeted funds remain to construct project, existing contract will be amended or new contract issued for construction work with existing BIL-EC funds.
  - b. If inadequate budgeted funds remain to construct, additional needed funds will be communicated to OHA-DWS for inclusion in future BIL-EC funding applications years.
11. Complete capacity assessment, SERP, Plans/Specs review, and OHA-DWS loan conditions as applicable (to occur prior to construction activities).
12. Project constructed; EC risk mitigated.
13. For projects that do not use all the funds, BizOR communicates with OHA-DWS so that funding can be reallocated (through EPA process) to a future or existing project.

(At end)

Version Log:

Version	Description / Updates	Author(s)	Date
0.1	Draft	KS/GB	4-2023
1.0	Final	GB	5-2023
2.0	Revisions summary: Revised language to make less-specific to the initial 2022 year of BIL-EC and more reflective of current activities and timelines.	GB	2-2024

*References*

*Implementation History*



OREGON STATE PUBLIC HEALTH DIVISION  
Office of the State Public Health Director

Tina Kotek, Governor

Oregon  
**Health**  
Authority

800 NE Oregon Street, Suite 930  
Portland, OR, 97232  
Phone: 971-673-1229  
Fax: 971-673-1299

## Memorandum

**To:** All Pregon Public Health Division Grantors

**From:** Nadia Davidson, Director of Finance

**Date:** July 10, 2023

**Subject:** Oregon Public Health Division Indirect Cost Allocation Rate

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The Oregon Health Authority, Public Health Division operates under a federally approved cost allocation plan in lieu of an indirect rate agreement for administrative overhead costs. This agency-level cost allocation plan is approved by the Department of Health and Human Services, Cost Allocation Services (DHHS-CAS).

For the period of July 1, 2023 through June 30, 2024, the assumed rate of indirect cost allocation for Public Health programs is 17.79% of direct personal services and services and supplies. This is the indirect percentage built into grant proposals for this period.

The Oregon Health Authority, Public Health Division is in the process of compiling a proposal to DHHS-CAS regarding a formal indirect cost rate agreement. If a rate is approved during the period, the indirect cost allocation percentage may change to reflect the new rate.

Very truly yours,

Nadia Davidson, MPH, MSF  
Director of Finance  
Oregon Health Authority, Public Health Division

July 19, 2023

To: Any Concerned Parties

RE: Updated Oregon Health Authority Other Payroll Expenses 2023-25 Estimate

The current estimated Other Payroll Expense (OPE) rate for the 2023-25 biennium (from July 1, 2023 through June 30, 2025) for the Oregon Health Authority (OHA), Public Health Division (PHD) is 54.70%. OPE factors are prescribed and updated periodically by Oregon's Department of Administrative Services and are costs in addition to salary for State of Oregon employees. The current estimated OPE rate is based on a combination of actual average salaries and OPE for all positions within PHD and known OPE changes occurring this biennium.

Actual OPE rates vary based upon the salary of the individual. Therefore, the rate is a blended estimate of actual OPE costs and the fixed rates (e.g., flex or health benefits) that do not change based upon the salary of the individual. Other costs like PERS benefits vary based upon salary. Below is the OPE detail.

Variable OPE Costs:

- Public Employees Retirement System (PERS): 17.92% of salary
- PERS Pension Bonds (POB): 6.70% of salary
- Social Security and Medicare: 7.65% of salary
- Paid Family Medical Leave 0.40% of salary

Fixed OPE Costs:

- Employee Relations Board (ERB): \$2.19 per month
- Worker's Compensation: \$1.91 per month
- Flex Benefits (Health Insurance): \$1,650 per month

Sincerely,



Nadia Davidson, MPH, MS  
Director of Finance  
OHA-Public Health Division



June 15, 2021

Shawn Jacobsen, Controller  
DHS/OHA Shared Services  
Office of Financial Services  
500 Summer St. NE, E-31  
Salem, OR 97301

Dear Ms. Jacobsen:

This letter provides approval of the Oregon Health Authority Cost Allocation Plan (Plan) which was submitted by letter dated September 30, 2020, and subsequently revised electronically on February 2, 2021. This Plan, which was submitted in accordance with 45 CFR 95, Subpart E, is effective July 1, 2020.

Acceptance of the actual costs in accordance with the approved Plan is subject to the following conditions:

1. The information contained in the Plan and provided by the State in connection with our review of the Plan is complete and accurate in all material respects.
2. The actual costs claimed by the State are allowable under prevailing cost principles, program regulations and law.
3. The claims conform with the administrative and statutory limitations against which they are made.

This approval relates only to the methods of identifying and allocating costs to programs, and nothing contained herein should be construed as approving activities not otherwise authorized by approved program plans or Federal legislation and regulations.

Implementation of the approved cost allocation plan may subsequently be reviewed by authorized Federal staff. The disclosure of inequities during reviews may require changes to the Plan.

If you have any questions concerning the contents of this letter, please contact Karen Wong of my staff at 415-437-7835. Please submit your next proposed Plan amendment electronically via email to [CAS-SF@psc.hhs.gov](mailto:CAS-SF@psc.hhs.gov).

Sincerely,

Arif M. Karim -S Digitally signed by Arif M. Karim -S  
Date: 2021.06.17 06:30:24 -05'00'

Arif Karim, Director  
Cost Allocation Services

cc: Terrence Perry, CDC  
Elizabeth Naftchi, HRSA

Todd McMillion, CMS  
Jack Goldberg, SAMHSA

Francisco Lebron, FNS

## **APPENDIX C: Timely & Expeditious Use of Funds**

- Sources & Uses Table



**Oregon’s Safe Drinking Water Revolving Loan Fund (SDWRLF) Sources & Uses Table**  
**SFY2023 & SFY2024 (projections)**

<b>Sources &amp; Uses Table for Oregon BIL-EC Project Funds</b>	<b>SFY 2023</b> <b>7/1/22-6/30/23</b>	<b>SFY 2024</b> <b>(Projected)</b> <b>7/1/23-6/30/24</b>
Beginning Project Cash Balance (BIL-EC)	\$0	0
Undrawn BIL-EC Federal Funds	\$0	\$8,844,200
Unspent Revenue Bond Balance (N/A)	\$0	0
State Match Balance (N/A, No State Match for EC)	\$0	0
<b>Total Funds Available - Beginning of Year</b>	<b>\$0</b>	<b>\$8,844,200</b>
Repayments from BIL-EC Loans (N/A, Loans are 100% Forgivable)	\$0	0
Estimated Repayments from New/Future Loans (N/A)	\$0	0
<b>Total Repayments</b>	<b>0</b>	<b>0</b>
State Match for Current Year (N/A, No State Match for EC)	\$0	0
State Match Bond Proceeds (N/A)	\$0	0
<b>Total State Match</b>	<b>0</b>	<b>0</b>
Revenue Bond Proceeds (N/A)	\$0	0
Anticipated BIL-Emerging Contaminants Funding	\$8,844,200	\$10,288,400
Interest Earnings on Invested Funds (N/A)	\$0	0
<b>Total All Inflows</b>	<b>\$8,844,200</b>	<b>\$10,288,400</b>
Estimated Debt Service - Outstanding Revenue Bonds (N/A)	\$0	\$0
Actual Disbursements (From Committed Projects)	\$0	\$0
Projected Disbursements (Projects Pending Contract)	\$0	\$1,669,908
Projected Disbursements (Remaining to Draw, Executed Contracts)	\$0	\$0
<b>Total All Disbursements &amp; Outflows</b>	<b>\$0</b>	<b>(\$1,669,908)</b>
Fundable Projects List (PPL)	\$0	(\$83,162,359)
Fund Balance Reserves	\$0	\$0
<b>Ending Cash Balance</b>	<b>\$8,844,200</b>	<b>-\$65,699,667</b>

Explanations about the Sources and Uses Table above are referenced within the Intended Use Plans executive summary.

## **APPENDIX D: Set-Aside Work Plans**

- Administrative Expense
- Small System Technical Assistance
- State Program Management

**2023 Work Plan – DWSRF (BIL Emerging Contaminants)  
Oregon Health Authority, Public Health Division  
Administrative Expense – Loan Fund & Set-Aside**

**General**

This is a continuation effort to administer and operate the Loan Fund (100% forgivable loan) and Set-Asides, which is carried out jointly under the most current Inter-Agency Agreement (IAA) between the Oregon Health Authority (OHA) and Business Oregon.

BIL Emerging Contaminants (EC) funding primary purpose is focused around addressing and/or mitigating people’s exposure to EC in drinking water with priorities on perfluoroalkyl and polyfluoroalkyl substances (PFAS). These BIL-EC Set-Aside funds also help OHA and Business Oregon administer Oregon’s DWSRF program and effectively support drinking water systems statewide.

**Funding**

Funding for this Set-Aside is **\$462,400** or 4.00% of EPA’s FFY-2023 BIL Emerging Contaminants allotment to Oregon of **\$11,560,000** (*which includes additional \$67,000 reallocated funds from EPA*). This funding level supports 6.30 FTE between OHA (1.50) and Business Oregon (4.80).

These Set-Aside funds will be targeted for use during SFY-2024-25 (i.e., July 1 – June 30).

**Goals and Objectives**

The goal is to provide the administrative framework necessary for eligible public water suppliers to access loan funds for planning, engineering design, and construction projects needed to address EC in drinking water. Specific objectives include, but are not limited to:

- < Apply for and administer the BIL-EC annual capitalization grant from US-EPA
- < Manage infrastructure and planning project reviews, ratings, and rankings semi-annually
- < Process loan applications and execute loan agreements
- < Monitor progress of planning, design, and construction projects
- < Manage contracts for assistance to water suppliers
- < Process project payments
- < Report on program progress and results
- < Assess and implement new priorities and changes to the program to better serve Oregonians
- < Coordinate with Business Oregon Regional Staff in conducting timely capacity assessments and environmental reviews
- < Manage Set-Aside funds and programs

**Implementation Responsibility**

OHA is the lead agency, responsible for the annual BIL-EC capitalization grant application

process, the rating and ranking of eligible drinking water projects, establishing program priorities, managing service contracts for assistance to water suppliers, and oversight of the Loan Fund operation and results. Business Oregon operates and administers the Loan Fund project financing for the individual water system projects.

### **Evaluation of Results**

The primary results of work under the Administrative Expense Set-Aside are the financing and completion of drinking water system projects. The number of projects initiated, in progress, and completed will be reported annually along with an overall evaluation. Additional Administrative Expense Set-Aside efforts will continue to be used for the overall oversight of the program and to administer and manage the annual grant application processes.

**2023 Work Plan – DWSRF (BIL Emerging Contaminants)  
Oregon Health Authority, Public Health Division  
Small Water System Technical Assistance**

**General**

This is continuation of effort.

Through Oregon's Drinking Water State Revolving Fund (DWSRF), contracts have been established with drinking water Circuit Riders to provide short-term (typically 10 hours or less) on-site technical and engineering assistance for community water systems serving populations under 10,000, as well as nonprofit transient and non-transient water systems. For these systems, services are free.

Beginning with the 2022-2027 Circuit Rider contract, Oregon will also utilize state general funds to provide technical assistance to water systems that are not eligible for traditional circuit rider assistance, excepting only federally owned water systems. As above, these services are intended to provide short term technical and engineering assistance (typically 10 hours or less) and are provided free of charge.

Program activities include:

On-Site Technical Assistance – The contractor receives requests for assistance directly from the water system, or requests initiated from state and county staff. Contractors perform quick response, one-on-one technical assistance that aids in solving short-term operational problems, assists with compliance-related issues, and provides technical, managerial, and planning information to system operators and administrators. Services are generally restricted to 10 hours or less per system without prior approval from OHA management.

SRF Program Assistance – The contractor also provides assistance to systems seeking SRF financing needing a pre-engineering design report to initiate the loan process or just to get help completing the SRF loan application form itself.

Crypto and MPA Sampling – EPA allows for the payment of the costs of LT2 monitoring for Crypto through the SDWRLF Set-Asides. Surface water systems exceeding the E. coli triggers are referred to the Technical Assistance Circuit Rider for assistance in determining the Bin Class under LT2. A part of this determination is Crypto sampling. Similarly, Ground water systems identified as being at risk for GWUDI (Ground Water Under Direct Influence) are targeted for MPA sampling. A referral to the circuit rider for assistance in determining GWUDI can be made by state staff, which entails sampling by the circuit rider for determination of GWUDI / non-GWUDI status.

NEW - Project Management - Contractor shall assist water systems identified by OHA by providing project management duties for approved service actions. This service shall consist of, but is not limited to, an initial on-site evaluation and assessment of project scope and time requirements for the system, which will be presented to OHA in a written report. This review and report activity shall not exceed 10 hours without prior written approval. If the submitted

proposal receives approval, the Contractor shall assume the role of project manager for the life of the approved service. OHA will authorize such service in 20-hour increments.

NEW – Asset Management - Contractor shall provide on-site technical assistance to water systems evaluating or implementing an asset management strategy or program. OHA will authorize such services in 15-hour increments.

Small Water System Operator Training - Oregon also provides training and assistance to small water systems in their efforts to comply with small water system operator certification requirements. Oregon contracts with an outside training provider to provide monthly training classes for small water systems. This free class covers the basics of water system operation and maintenance, water testing and other regulations, waterborne disease, water treatment for small systems, and record keeping. Small water system operators are required to attend one of these training classes (or an equivalent on-line version) every three years to maintain eligibility for DRC duties and responsibilities.

### **Funding**

The funding from the Technical Assistance set-aside is **\$231,200** or **2%** of EPA’s FFY-2023 BIL Emerging Contaminants allotment to Oregon of **\$11,560,000** (*which includes additional \$67,000 reallocated funds from EPA*). Funding will support Oregon’s circuit rider program and 0.92 FTE.

These set-aside funds will be targeted for use during SFY-2024-25 (i.e., July 1 – June 30).

### **Implementation Schedule**

Circuit rider services are delivered statewide on as needed basis.

Additionally, small water system training classes are delivered in person 16 times per year at numerous locations throughout the state and offered quarterly (4 times) per year via webinar.

### **Implementation Responsibility**

Service contracts are offered through an open competitive Request for Proposal (RFP). A Department (OHA) committee selects the most qualified contractor candidates, and they will enter into a standard contract generally for a period of two years, but which can be extended or amended up to a maximum of five years with the agreement of all parties. The Department will provide contract oversight and assure contracts are current and meet state contract requirements.

### **Evaluation of Results**

The Department evaluates contractors periodically by reviewing contact reports of technical assistance provided, and satisfaction surveys of the water systems receiving technical assistance and training. Long-term evaluation is based on compliance status trends (such as the Oregon Benchmarks) of the water systems being served.

For more circuit rider information, visit

<http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Operations/Pages/circuitrider.aspx>

For more information about our small water system training program, visit

<http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/OperatorCertification/SmallWaterSystems/Pages/schedule.aspx>

**2023 Work Plan – DWSRF (BIL Emerging Contaminants)  
Oregon Health Authority, Public Health Division  
State Program Management- State & Partner Support**

**General**

This is a continuation of effort.

Funds from this set-aside augment the Public Water Supply Supervision grant (PWSS). The PWSS grant work plan defines the roles, responsibilities, objectives, performance measures, annual work plan, and a compliance assurance agreement.

The Oregon Health Authority (OHA) and USEPA annually negotiate the PWSS.

**Funding**

The funding from the State Program Management (SPM) set-aside is **\$578,000** or **5%** of EPA’s FFY-2023 BIL Emerging Contaminants (EC) allotment to Oregon of **\$11,560,000** (*which includes additional \$67,000 reallocated funds from EPA*). Because OHA is not allocating the full 10% authorized to this set-aside, OHA will be “banking” (reserving) the rights to the remaining 5% (\$578,000) for future use.

These funds will support 2.58 FTE to support the PWSS program conducting sanitary surveys, responding to water quality alerts, follow-up on priority non-compliant water systems, administer contracts, and provide clerical support.

These set-aside funds will be targeted for use during SFY-2024-25 (i.e., July 1 – June 30).

**Implementation Responsibility**

OHA provides the leadership for the Oregon Drinking Water Services. OHA-Drinking Water Services provides core drinking water services as well as supports contractors on technical issues and provides training to assure that our contractors are properly trained and capable of providing the contracted services.

Core services and contracted work involves conducting sanitary surveys, investigations of water quality alerts, resolution of priority non-compliant water systems, and conducting needed follow-ups to these activities. Various other related tasks for small drinking water systems are also performed with contracted work.

**Evaluation of Results**

The overall effort is evaluated based on overall compliance figures (Oregon Annual Compliance Report, and Oregon Benchmarks) and the change in the number of water systems that are Priority Non-compliers. OHA-Drinking Water Services displays these measures on-line. OHA-Drinking Water Services conducts formal audits of contracts every three years.



## **APPENDIX E: Public Notices**

- Intended Use Plan (IUP) Public Notice Letter
- Project Priority List Public Notice Letter



PUBLIC HEALTH DIVISION  
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon  
**Health**  
Authority

800 NE Oregon Street, Suite #640  
Portland, OR 97232-2162  
(971) 673-0405  
(971) 673-0694 – FAX  
<http://healthoregon.org/dwp>

March 8, 2024

### Legal Notice

Legal notice of public review and comment period concerning the proposed 2023 Intended Use Plan (IUP) attached below for Oregon's new Bipartisan Infrastructure Law (BIL) Emerging Contaminants program. The BIL Emerging Contaminants increases funding to Oregon's existing Drinking Water State Revolving Fund (DWSRF) program with priority funding going towards perfluoroalkyl and polyfluoroalkyl substances (PFAS), manganese, and cyanotoxin mitigation.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on the proposed IUP as part of the grant application process to the U.S. Environmental Protection Agency (EPA). This IUP explains how OHA-DWS prioritizes funding to eligible community and non-profit non-community public water systems and the funding of Set-Aside activities. It also is a key aspect of how we will procure the funding resources that the EPA has appropriated Oregon during Federal fiscal year 2023.

The public comment period for the IUP will be from Monday, March 11 through Thursday, April 11, 2024. If you would like to make a comment, please email your comments to [DWS.SRF@odhsoha.oregon.gov](mailto:DWS.SRF@odhsoha.oregon.gov) by no later than 5pm on Thursday, April 11<sup>th</sup> to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

*Adam DeSemple*

PROGRAM COORDINATOR, DWSRF/BIL  
Oregon Health Authority  
Center for Health Protection  
Drinking Water Services  
800 N.E. Oregon St., STE 640  
Portland, OR. 97232-2162  
[adam.desemple@oha.oregon.gov](mailto:adam.desemple@oha.oregon.gov)  
<http://healthoregon.org/srf>  
<http://oregon.gov/bil>



PUBLIC HEALTH DIVISION  
Center for Health Protection, Drinking Water Services

Tina Kotek, Governor

Oregon  
**Health**  
Authority

800 NE Oregon Street, Suite #640  
Portland, OR 97232-2162  
(971) 673-0405  
(971) 673-0694 - FAX  
<http://healthoregon.org/dwp>

December 1, 2023

### Legal Notice

Legal notice of public review and comment period concerning proposed changes to the Project Priority List (PPL) for Oregon's Drinking Water State Revolving Fund (DWSRF) for the end of the first quarter of state fiscal year 2024. This PPL exclusively includes eligible drinking water projects that will be considered for Oregon's 2023 [Bipartisan Infrastructure Law \(BIL\)](#) Emerging Contaminants (BIL-EC) funding. Currently, Oregon's priorities for BIL-EC funding focus on perfluoroalkyl and polyfluoroalkyl substances (PFAS), manganese, and cyanotoxins. Please reference footnotes on PPL for more information.

One of Oregon Health Authority (OHA) Drinking Water Services (DWS) responsibilities as a state agency managing the DWSRF/BIL program as set forth under Section 1452 (40 CFR 35.555 (b)) of the amended 1996 Safe Drinking Water Act (SDWA) is to provide the public the opportunity to comment on changes to the Intended Use Plan (IUP) as part of the grant application process to the U.S. Environmental Protection Agency (EPA). The PPL is important to how the DWSRF/BIL program implements the IUP. Projects have been rated (i.e., scored) by OHA staff to determine ranking and placement on the BIL-EC PPL. Before projects can be funded, we are obligated to provide the public the opportunity to review and comment on the proposed PPL.

The public review and comment period for the PPL will be from Friday, December 1 through Monday, December 11, 2023. If you would like to make a comment, please email your comments to [DWS.SRF@odhsoha.oregon.gov](mailto:DWS.SRF@odhsoha.oregon.gov) by no later than 5pm on Monday, December 11<sup>th</sup> to be considered. If you have questions, you may also email or call me at (503) 956-8287.

Thank you.

*Adam DeSemple*

PROGRAM COORDINATOR, DWSRF/BIL  
Drinking Water Services  
800 N.E. Oregon St., STE 640  
Portland, OR. 97232-2162  
[adam.desemple@oha.oregon.gov](mailto:adam.desemple@oha.oregon.gov)  
<http://healthoregon.org/srf>  
<http://Oregon.gov/bil>

## **APPENDIX F: Agreements**

- Interagency Agreement (with Business Oregon)
- Interagency Agreement (with DEQ)
- Operating Agreement (with EPA)

# INTERAGENCY AGREEMENT

This Agreement is between the **Oregon Health Authority** (“OHA”) and the **Oregon Infrastructure Finance Authority of the Oregon Business Development Department** (“IFA”), both individually without distinction as “Party” and collectively as the “Parties.”

## SECTION 1: AUTHORITY

This Agreement is entered into pursuant to the authority granted by ORS 190.110 and 283.110, allowing state agencies to enter into agreements with other state agencies to cooperate in performing duties, exercising powers or administering policies or programs.

## SECTION 2: PURPOSE

- 2.1 Congress enacted the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 (“Act”) to include authorization for capitalization grants to states to implement a Drinking Water State Revolving Fund (DWSRF) program and required program activities, and the US Environmental Protection Agency (“USEPA”) adopted rules that define further the DWSRF program. The Act was amended in 2018 by the Water Infrastructure Investments for the Nation Act (WIIN Act), authorizing EPA to implement a grants program to support the needs of public water systems in underserved communities that are also considered small or disadvantaged communities. Congress appropriated funds to support the grants program in 2019.
- 2.2 On November 15, 2021, the Infrastructure Investment and Jobs Act (H.R. 3684), commonly referred to as the Bipartisan Infrastructure Law (BIL) was signed into law. The law provides the US Environmental Protection Agency (EPA) with grant funds that can be appropriated to states for investments in drinking water infrastructure over five years (2022 – 2026). BIL funding is provided to Oregon in three distinct annual allocations BIL General Supplemental (BIL-GS), BIL Emerging Contaminants (BIL-EC), and BIL Lead Service Line Replacement (BIL-LSL).
- 2.3 BIL also allocated additional funding to address emerging contaminants through EPA’s Emerging Contaminants in Small or Disadvantaged Communities (EC-SDC) Grant program.
- 2.4 The Oregon Legislature has periodically authorized the issuance of lottery supported infrastructure bonds sufficient to provide proceeds to the IFA for the matching funds required from Oregon to receive federal “capitalization grants” under the Act.
- 2.5 The Oregon Health Authority, Public Health Division, Drinking Water Services (“OHA”) has the statutory responsibility for administration and enforcement of federal and state drinking water standards and rules in Oregon. OHA establishes public health priorities for public water systems and provides technical assistance and outreach utilizing fund set-asides.
- 2.6 The Oregon Infrastructure Finance Authority (“IFA”) administers the Safe Drinking Water Revolving Loan Fund (the “Fund”)(ORS 285A.213), and administers financing programs which are available to assist Oregon communities with their drinking water infrastructure projects and drinking water source protection projects. The Fund is comprised of DWSRF capitalization grant funds, state matching funds, loan principal and interest repayments, and capitalization grants under the Bipartisan Infrastructure Law General Supplemental appropriations (2022-2026)

- 2.7 The purpose of this agreement is to ensure interagency coordination and effective implementation of the DWSRF program and the WIIN Act grants program.

### **SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement shall begin on **July 1, 2023** and shall terminate on **June 30, 2025**, unless terminated earlier in accordance with Section 7.

### **SECTION 4: AUTHORIZED REPRESENTATIVES**

#### **4.1 OHA's AUTHORIZED REPRESENTATIVE IS:**

Anthony J. Fields  
800 NE Oregon Street, Suite 640  
Portland, OR 97232-2162  
Office: (971) 673-2269  
Fax: (971) 673-0694  
Email: [anthony.j.fields@oha.oregon.gov](mailto:anthony.j.fields@oha.oregon.gov)

#### **4.2 IFA's AUTHORIZED REPRESENTATIVE IS:**

Jon Unger  
775 Summer Street NE, Suite 200  
Salem, OR 97301  
Office: (503) 507-7107  
Fax: (503) 581-5115  
Email: [jon.unger@biz.oregon.gov](mailto:jon.unger@biz.oregon.gov)

- 4.3 A party may designate a new authorized representative by written notice to the other party.

### **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

The parties agree to continue their responsibilities to meet the requirements of the Act and program as follows:

#### **5.1 Grant Application; Budgets**

OHA and IFA will coordinate on preparation of the annual Intended Use Plan (IUP) as defined in the Act. OHA will obtain public comment and otherwise be responsible for the IUP.

OHA will coordinate with IFA on preparation of the DWSRF Capitalization Grant, BIL-GS, BIL-EC, BIL-LSL, and EC-SDC grants including the percent of federal allocation set-aside for administration and the allocation of the administrative set-aside between OHA and IFA. OHA will annually prepare the requests and apply for the federal grant.

OHA and IFA will consult when preparing their respective state annual and biennial budgets to implement the DWSRF program. This includes agreeing on the amount of total transfers between OHA and IFA for annual project and administrative costs.

OHA and IFA will coordinate at fiscal year-end closing concerning transfers.

#### **5.2 State Matching Funds**

Upon notification of each capitalization grant, the IFA will deposit state monies into the Fund equal to 20 percent of the DWSRF capitalization grant or the percentage otherwise required by EPA. The match is required to be made on or before the time that EPA funds are drawn. Deposit of matching funds for Bipartisan Infrastructure Law General Supplemental appropriations will be dependent on IFA fund availability and legislative action.

### 5.3 Payments for Awarded Projects

All EPA funds will be received by OHA. OHA will maintain separate and identifiable accounts for the portion of the capitalization grant to be used for base program requests, disbursement requests received by IFA and for all set-aside activities and will transfer funds to IFA as requests are approved.

When it receives a disbursement request from a loan recipient based on obligated or incurred costs for a “base program” project, IFA has primary responsibility for determining allocation between the Fund and federal reimbursement. IFA will forward all such requests for federal reimbursement, and all requests related to “set-aside” projects and activities, to OHA.

### 5.4 Set Asides

OHA is responsible for managing set-aside activities and expenses under DWSRF annual federal capitalization grants, BIL-GS grants, BIL-EC grants, and BIL-LSL grants for:

- 5.4.1 Administrative expenses – not to exceed 4 percent of the cumulative allotment. IFA will bill OHA no more frequently than monthly for IFA’s administrative expenses.
- 5.4.2 Technical Assistance to Small Systems – not to exceed 2 percent of the cumulative allotment.
- 5.4.3 State Program Management – not to exceed 10 percent of the cumulative allotment.
- 5.4.4 Local Assistance and Other State Programs – not to exceed 15 percent of the capitalization grant and no more than 10 percent is used on any one of the defined activities.

OHA will inform IFA of the available fund balances for the administrative expenses set-aside category on a quarterly basis.

### 5.5 Federal Eligibility Costs

OHA is responsible for determining the eligibility of all OHA and IFA administrative expenses. The State will follow the principles and standards of 2 C.F.R. Part 225 (formerly OMB Circular A-87) for determining costs for Federal awards.

### 5.6 Cash Management

OHA will process all requests for federal reimbursement through the Automated Clearing House (ACH) or the Automated Standard Application for Payments (ASAP) system.

### 5.7 Period of Availability of Federal Funds

OHA is responsible to follow all federal requirements related to timing of capitalization grant payments and state obligation of funds (E.g., Grant payments from a capitalization grant shall begin no earlier than the quarter in which the grant is awarded, and generally end no later than eight quarters after the grant is awarded).

The State must obligate funds for eligible projects within one year of accepting a payment. Funds are disbursed for set-aside activities in accordance with costs being incurred under approved workplans. Cumulative binding commitments must be made in an amount equal to the amount of each grant payment plus the required State match that is deposited into the DWSRF within one year after the receipt of each grant payment (a binding commitment is a legal obligation by the State to a local recipient that defines the terms for assistance under the DWSRF program).

## **5.8 Federal Reporting**

OHA is responsible for preparing and submitting Federal Financial Report (FFR) SF-425 to report expenditures under federal awards, as well as, when applicable, cash status. OHA will also obtain and report necessary subaward information as required by the Federal Funding Accountability and Transparency Act.

OHA will complete reports regarding set-aside activities and expenses as required by USEPA, including but not limited to reporting in the State Revolving Fund (SRF) Drinking Water Data System.

IFA will complete reports regarding projects using the Fund as required by USEPA, including but not limited to reporting in the SRF Drinking Water Data System.

## **5.9 Program Income**

IFA may charge a fee on loans to non-disadvantaged communities. Such fees may be collected in an IFA account outside the Fund and used to supplement IFA administrative expenses. IFA is responsible for coordinating with OHA for the purpose of USEPA reporting of fee account details. Use of fee revenue must comply with allowed uses as prescribed by EPA.

## **5.10 Solicitation of Letters of Interest**

IFA, in conjunction with OHA, is responsible for establishing and maintaining a system to allow submission of LOIs by potential funding recipients for infrastructure and BIL-EC projects. IFA will ensure OHA access of all relevant information.

## **5.11 Rating and Ranking of Projects**

OHA is responsible for determining project priority and rating criteria, reviewing “Letters of Interest” from water systems, and using those criteria, will assign points to water system projects and develop a project priority list.

## **5.12 Disadvantaged Community Determination**

As rating and ranking is conducted, OHA is responsible for identifying whether a water system is classified as a “disadvantaged community” consistent with Section 1452(d)(2) of the Safe Drinking Water Act. Any proposed changes to the definition of “disadvantaged community” will be collaboratively developed by IFA and OHA and will be subject to a public comment process.

## **5.13 Managerial and Technical Capacity Review**

OHA will assess the managerial and technical capacity of applicants to maintain compliance with the Act and forward the assessment results to the IFA.

## **5.14 Financial Review**

IFA will assess the financial capacity of applicants to complete the project, operate and maintain the system, and repay a loan.

## **5.15 Water System Eligibility and Allowable Activities**

OHA has initial, and primary overall responsibility for determining applicant and activity eligibility under the Act and applicable IFA and OHA Oregon Administrative Rules, including prohibitions on contracting with or making subawards to parties that are suspended or debarred or whose principals are suspended or debarred. IFA receives and is responsible for



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reviewing loan and grant applications, which may contain more detailed information, and will remain in contact with system owners to monitor and assist with their projects. Once an application is received, IFA will implement the secondary responsibility to ensure all lower-tier activities and expenditures are eligible.

### **5.16 Technical Review Requirements**

When required, OHA will provide technical review of engineering reports, master plans, and construction plans and specifications for projects funded by this program.

### **5.17 Environmental Review Requirements**

OHA will maintain Oregon Administrative Rules, policies, and procedures, and be responsible for the review process of environmental impacts created by the construction of drinking water facilities funded wholly or in part by the DWSRF program, and all set-aside activities that impact the quality of human environment receiving assistance from the DWSRF program.

### **5.18 Communicating Federal Labor Standards Requirements to Loan Recipients**

IFA will notify Recipients about the federal (and state) Labor Standards applicable to them and all contractors on their project, including prevailing wage (David-Bacon) requirements, through financing contract language, and through instructions and sample contract language and forms for use in construction contracts. IFA will forward Disadvantaged Business Enterprises activity reports to OHA, who will forward to the USEPA.

### **5.19 Federal Procurement Standards**

As allowed by the Act, the State and subrecipients shall use state policies and procedures (that meet federal standards) for all procurements, whether with federal or state funds. IFA shall ensure that all contracts with subrecipients, and all contracts and subcontracts issued on behalf of subrecipients, specify relevant state procurement policies and procedures and include any clauses required by the Act and their implementing regulations and related executive orders.

### **5.20 Safe Drinking Water Revolving Loan Fund**

The IFA will administer, manage, and operate the Fund. The IFA will ensure that the accounting, audit, and fiscal procedures for the Fund conform to applicable government standards, including those set forth in the capitalization grant award.

### **5.21 Project Financing and Project Administration**

The IFA will administer the loan program for all projects funded through the Fund including, but not limited to, infrastructure projects and Sustainable Infrastructure Planning Projects. Duties and responsibilities include:

- 5.21.1** Develop and maintain, in consultation with OHA, administrative rules and state program guidelines for the Fund and program, including for source water protection projects and for other Fund assistance.
- 5.21.2** Receive electronic or hard copy letters of interest for funding assistance and ensure OHA has access for project evaluation.
- 5.21.3** Notify water systems of their LOI status on the ranked project priority list.
- 5.21.4** Determine the amount and type of financing to be awarded to applicants and verify that moneys in the Fund necessary to complete the project will be available.
- 5.21.5** Ensure that the State meets EPA grant requirements related to additional subsidy, as outlined in annual grant agreements.

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- 5.21.6** Conduct a financial review of applicants for the following fiscal attributes; adequate water rate structure, billing procedure, or alternate financial plan, to assure that funds are collected and available to repay loans from the Fund. Require recipients to adequately plan for the anticipated operation, maintenance, and replacement costs of the water system.
- 5.21.7** Coordinate with other federal, state, or private financing assistance providers on projects with multiple financing partners.
- 5.21.8** Establish standards for disbursement of funds and closeout of projects including, but not limited to, monitoring of all projects, and final inspections of construction projects; and provide fiscal tracking and loan payment systems that comply with federal standards.
- 5.21.9** Enter into contracts with recipients for financing the projects.
- 5.21.10** Take steps to ensure that recipients implement “good faith efforts” in soliciting and procuring Disadvantaged Business Enterprises, as required by the USEPA. Report to OHA the level of activity by Minority-owned and Women-owned Business Enterprises for each Fund recipient.
- 5.21.11** Complete reports as required by the USEPA, including but not limited to reporting in the SRF Drinking Water Data System.

### **5.22 Other Joint Responsibilities**

The IFA and OHA agree to work together and cooperate in efforts necessary for efficient and effective administration, management and operation of the program and Fund, including, but not limited to rule revisions, gathering and reporting of information and preparing quarterly activity updates and annual summary reports of accomplishments, annual USEPA meetings, staff training, public information and workshops, and other activities that are needed to carry out the program and comply with federal and state laws and regulations applicable to the program.

### **5.23 Claims**

The parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, established by ORS Chapter 278, and is subject to the Oregon Tort Claims Act. The parties agree that any tort liability claim, suit or loss resulting from or arising out of the party’s activities may be allocated by the Risk Management Division of the Department of Administrative Services for purposes of their respective loss experience and subsequent allocation of self-insurance assessments under ORS 278.435. Each party agrees to notify the Risk Management Division and the other party in the event it receives notice or knowledge of any such claims.

### **5.24 Records Maintenance Access**

Each party will maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, each party will maintain other records pertinent to this Agreement to clearly document its performance. Each party acknowledges and agrees that the other party, and the federal government and their duly authorized representatives will have access to all such records and to perform examinations and audits and make excerpts and copies. Each party will retain and keep accessible all such records according to applicable state record retention schedules.

### **5.25 Drinking Water Source Protection Project Grants**

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IFA will develop and maintain, in consultation with OHA, administrative rules and state program guidelines for source water protection projects. OHA will consult with IFA during preparation of the annual DWSRF capitalization grant to determine an amount to allocate toward drinking water source protection grants. In addition, prior to soliciting applications for new grant projects, OHA will consult with IFA on the amount to allocate toward grant projects in a given annual solicitation cycle. OHA, working with DEQ Source Water Protection staff partners, will review and rank applications and recommend projects for funding. OHA will establish and maintain a system to allow submission of LOIs by potential funding recipients for drinking water source protection projects. IFA will develop funding agreements with project recipients and administer the agreements. OHA will monitor project progress and status and coordinate with IFA regarding the need for time extensions or termination of projects that fail to progress in a timely manner.

### 5.26 WIIN Act Small, Disadvantaged Communities Grants

OHA will coordinate with IFA on preparation of WIIN Act Small, Disadvantaged Communities grant applications. OHA will identify and prioritize prospective grant projects, submit grant applications to EPA and administer grant awards. IFA will assist in identifying sources of grant match, administer grant project contracts, and coordinate with OHA on federal reporting. Prior to communicating with eligible water systems and applying to EPA for funding, OHA and IFA will establish mutually agreed upon written policies and procedures.

## SECTION 6: COMPENSATION AND PAYMENT TERMS

OHA shall reimburse IFA up to but not in excess of **\$ 42,833,000.00** for all expenses reasonably and necessarily incurred in performing the services and delivering the goods required under this Agreement. Payment shall be made monthly for services provided and goods delivered to OHA's satisfaction during the prior month, after submission of a satisfactory invoice.

The annual DWSRF Capitalization Grant, CFDA Number: **66.468**, and the WIIN Act Small, Disadvantaged Community grant, CFDA Number: **66.442**, repayment funds, and DWSRF fees are the sources of revenue used to support activities described in this agreement. DWSRF Capitalization Grant, BIL-GS, BIL-EC, and BIL-LSL administrative set-asides will be used to fund IFA administrative costs. DWSRF loan fee revenue may also be used for EPA eligible administrative expenses incurred by the IFA as described in section 5.8 of this Agreement.

OHA and IFA will consult when preparing their respective annual and biennial budgets to implement this Agreement. **Budgets will remain within and depend upon the annual federal allotment of Oregon's DWSRF Capitalization Grant, BIL-GS Grant, BIL-EC Grant, BIL-LSL Grant and repayment funds, which will vary from year to year, and Congressional appropriations for WIIN Act Small, Disadvantaged grants.** The parties will coordinate on preparation of annual state budgets, potential revisions as necessary due to federal budget adjustments, Annual and Biennial Reports to EPA, and will assist each other in budget presentations and evaluations/audits as appropriate.

## SECTION 7: TERMINATION

- 7.1 This Agreement may be terminated at any time by mutual written agreement of the Parties.
- 7.2 A Party may terminate this Agreement upon 180 days written notice to the other Party.
- 7.3 A Party may terminate this Agreement, in whole or in part, immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:

## **179523-0**

- 7.3.1** A party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement;
- 7.3.2** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;
- 7.3.3** The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within 20 days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.

## **SECTION 8: AMENDMENTS**

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.

## **SECTION 9: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

## **SECTION 10: SURVIVAL**

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## **SECTION 11: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 12: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

## **SECTION 13: LIABILITY AND INSURANCE**

- 13.1** The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each Party agrees to accept that

coverage as adequate insurance of the other Party with respect to personal injury and property damage.

- 13.2** The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of, or activities under, this Agreement shall be allocated, as between the Parties, in accordance with law by Risk Management of the Department of Administrative Services for purposes of the Parties' respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to the Agreement agrees to notify Risk Management and the other Party in the event it receives notice or knowledge of any claims arising out of the Parties' performance of, or activities under, this Agreement.

## **SECTION 14: DAS REPORTING REQUIREMENT**

The Parties agree that OHA shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. OHA shall submit a summary of this Agreement to the Oregon Department of Administrative Services through the state electronic procurement system OregonBuys, within the 30-day period immediately following the Effective Date of the Agreement.

## **SECTION 15: RECORDS**

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

## **SECTION 16: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

## **SECTION 17: NO THIRD PARTY BENEFICIARIES**

OHA and DEQ are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

## **SECTION 18: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

## **SECTION 19: MERGER, WAIVER and MODIFICATION**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

## **SECTION 20: SUBCONTRACTS AND ASSIGNMENT**

- 20.1** Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.
- 20.2** Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the dates set forth below.

**STATE OF OREGON acting by and through its Business Oregon/Infrastructure Finance Authority:**

By: Chris Cummings Digitally signed by Chris Cummings  
Date: 2023.07.31 12:40:43 -07'00'

\_\_\_\_\_  
Date

Chris Cummings  
Printed Name

Deputy Director  
Title

**STATE OF OREGON acting by and through its Oregon Health Authority, Center for Health Protection:**

By: 

08/10/2023  
Date

~~Andre Course MPH, JD~~ Nadia Davidson, CFO/Director of Finance  
Printed Name

Administrator  
Title

## **INTERAGENCY AGREEMENT**

This Agreement is between the Oregon Health Authority (“OHA”) and the Oregon Department of Environmental Quality (“DEQ”), both individually without distinction as “Party” and collectively as the “Parties.”

### **Recitals**

**WHEREAS**, Congress enacted the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 (the “Act”), which included authorization for capitalization grants to States to implement a Drinking Water State Revolving Fund program and provision for States to set-aside up to 31% for specific program purposes.

**WHEREAS**, the Act allows Primacy States to set-aside up to 15% of their capitalization grant funds for the development and implementation of local drinking water protection initiatives and other State programs, including a Source Water Protection program.

**WHEREAS**, the American Water Infrastructure Act of 2018 Section 2013 requires community water systems serving populations greater than 3,300 to develop or update a Risk and Resilience Assessment and Emergency Response Plan (ERP). The ERP update must incorporate the findings of the Risk and Resilience Assessment. Information generated from a Risk and Resilience Assessments and related Emergency Response Plans can be used to update source water assessments and to inform selection and implementation of source water protection measures.

**WHEREAS**, in order to reduce the risks from regulated and unregulated contaminants, the Oregon Department of Environmental Quality (DEQ) has delegated authority to carry out existing Clean Water Act provisions in the drinking water source areas including a statutory duty to “protect, maintain and improve the quality of the waters of the state for public water supplies...” (ORS468B.015(2)).

**WHEREAS**, local communities need assistance developing strategies for drinking water protection and need assistance implementing these strategies.

**WHEREAS**, the Oregon Health Authority (OHA), as the State Primacy Agency, under the Act and DEQ wish to cooperate and coordinate activities to help communities protect drinking water source areas, improve resiliency and prepare for emergencies that may threaten drinking water or drinking water source areas.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows.



## **SECTION 1: AUTHORITY**

This Agreement is entered into pursuant to the authority granted by ORS 190.110 and 283.110, allowing state agencies to enter into agreements with other state agencies to cooperate in performing duties, exercising powers or administering policies or programs.

## **SECTION 2: PURPOSE**

- 2.1** To promote and support drinking water protection in Oregon by providing technical assistance to public water systems and communities in the state and sharing information about funding opportunities.
- 2.2** To assist public water systems and communities in building resiliency toward threats to drinking water sources from emerging contaminants, wildfires, and other natural disasters.
- 2.3** To coordinate and collaborate with other agencies and entities so that resources can be leveraged and managed to enhance drinking water protection.

## **SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement shall begin on **July 1, 2023**, and shall terminate on **June 30, 2025**, unless terminated earlier in accordance with Section 7.

## **SECTION 4: AUTHORIZED REPRESENTATIVES**

### **4.1 OHA's AUTHORIZED REPRESENTATIVE IS:**

Anthony J. Fields  
800 NE Oregon Street, Suite 640  
Portland, OR 97232-2162  
Office: (503) 752-8229  
Email: [Anthony.j.fields@oha.oregon.gov](mailto:Anthony.j.fields@oha.oregon.gov)

### **4.2 DEQ's AUTHORIZED REPRESENTATIVE IS:**

Julie Harvey  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
Office: (503) 229-5664  
Email: [julie.harvey@state.or.us](mailto:julie.harvey@state.or.us)

- 4.3** A party may designate a new authorized representative by written notice to the other party.

## **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

### **5.1 OHA RESPONSIBILITIES**

The Oregon Health Authority (OHA) has been granted primacy by EPA under the Act and has sole responsibility for administration and enforcement of federal and state drinking water standards and rules in Oregon. Therefore, OHA will:

## **Drinking Water Protection Program**

**OHA #179426-0**

**DEQ # R013-23**

### **5.1.1 General Program Support**

- a. Annually apply to EPA for and administer the Drinking Water State Revolving Loan Fund Capitalization Grant. Through interagency transfer payment, OHA will reimburse DEQ for costs associated with carrying out their responsibilities per this Agreement.
- b. Develop, in consultation with DEQ, an annual implementation work plan that establishes the priorities and specific tasks that OHA and DEQ staff intend to complete for the project year.
- c. Serve as the lead agency in coordinating and submitting the data for the annual and other progress reports to EPA on Source Water Protection goals/measures for implementation.
- d. Disseminate information to water systems regarding the Drinking Water State Revolving Loan Fund and other drinking water protection loan/grant funding and also score groundwater system applications.
- e. Coordinate and participate with DEQ in statewide training opportunities to promote drinking water source protection and resiliency planning. Develop education and outreach materials, fact sheets as needed. Periodically maintain and update the program webpage.

### **5.1.2 Technical Assistance to Public Water Systems**

- a. Work directly with Community Public Water Systems to identify and encourage drinking water protection projects that will qualify as Substantial implementation.
- b. Conduct source water assessment related activities of delineation, inventory and susceptibility analysis for state-regulated schools.
- c. Conduct outreach regarding drinking water source protection, focusing on community water systems, and drawing the relation between drinking water protection, resiliency and public health.
- d. Work to develop drinking water protection and emergency preparedness strategies in regional settings, involving several public water systems in a single effort.
- e. Provide technical assistance to individual groundwater-based public water systems that are pursuing the development of drinking water protection plans or protection strategies.

### **5.1.3 Source Water Assessments**

- a. Conduct drinking water source area delineations for groundwater-based public water systems that have been added or significantly modified using standard agency procedures.
- b. Coordinate Source Water Assessment updates with DEQ and other appropriate agencies.

## **Drinking Water Protection Program**

**OHA #179426-0**

**DEQ # R013-23**

### **5.1.4 Coordination with Partners**

- a. Communicate key information from source water assessments and other watershed analysis to state, federal and local nonprofit partners to guide priority actions and advance protection.

## **5.2 DEQ RESPONSIBILITIES**

Responsibilities of the Department of Environmental Quality (DEQ): DEQ has delegated statutory responsibilities to implement the Clean Water Act and is the designated lead agency for wellhead protection in Oregon. The DEQ will therefore:

### **5.2.1 General Program Support**

- a. Provide data and input to OHA for submitting the Annual Capitalization Grant applications to EPA. Coordinate with OHA on any modifications needed to improve operations or staff positions to achieve the program objectives. Assist OHA in developing an annual implementation workplan.
- b. Provide monthly invoices that include a report on the status of tasks included in the workplan and summary of activities accomplished by DEQ staff funded to implement drinking water protection. The monthly list of tasks and status should be organized under these 5 categories: 1) General program support, 2) Source Water Assessments, 3) Technical assistance to Public Water Systems, 4) Resiliency Planning, Preparedness and Response, 5) Coordination with state and federal agencies.
- c. Assist OHA in developing the EPA annual report and submitting new data for the annual and other progress reports to EPA on Source Water Protection goals/measures for implementation.
- d. Coordinate and participate with OHA in statewide training opportunities to promote drinking water source protection. Develop education and outreach materials as needed. Maintain and update the program web page.
- e. Disseminate information to water systems regarding the Drinking Water State Revolving Grants and other drinking water protection funding, score surface water system applications in coordination with OHA.
- f. Leverage the Clean Water Act and other programs and authorities to protect water supplies. Coordinate and assist with implementation of the Clean Water Act tools and programs within the drinking water source areas.
- g. Update and maintain existing Geographic Information System (GIS) data for the assessment and drinking water protection activities.
- h. Make data layers available to state partners and distribute the statewide GIS coverage layer(s) that includes all delineated drinking water source areas, surface water sensitive areas, and identified potential contaminant sources. Distribute GIS data for intakes, wells and springs only in accordance with OHA's security policy.

### **5.2.2 Technical Assistance to Public Water Systems**

- a. Work directly with Community Public Water Systems to identify and encourage drinking water protection projects that will qualify as Substantial implementation.
- b. Provide technical assistance to local partners (including watershed councils, Soil and Water Conservation Districts and land trusts) and individual surface water-based public water systems that are pursuing the development of drinking water protection strategies.
- c. Partner with communities and other watershed and ground water stakeholders to implement priority actions; provide technical assistance to communities who are implementing drinking water protection strategies. Develop regional partnerships where feasible.
- d. Conduct community outreach programs for drinking water protection; provide resources and assistance to local communities in efforts to foster citizen involvement in drinking water protection.

### **5.2.3 Source Water Assessments**

- a. Conduct Source Water Assessment for surface water-based public water systems that have been added since June 1999 using updated procedures.
- b. Support OHA in finalizing updated groundwater source water assessments by preparing source area delineations using OHA methodology, generating summary tables of regulatory database results, and preparing maps to show land use and potential risks.

### **5.2.4 Resiliency Planning, Preparedness and Response**

- a. Provide technical assistance when evaluating susceptibility to cyanotoxins and other toxics. Develop and coordinate with OHA on any new monitoring and prioritization.
- b. Provide technical assistance as needed to OHA on source water risk from emerging contaminants, including but not limited to PFAS contaminants.
- c. Coordinate and partner with OHA Emergency Preparedness and Planning program and communities to conduct local and state all-hazards planning. Assist and provide technical assistance to improving resiliency and ability to respond to emergencies and natural disasters that may impact watersheds supplying intakes.
- d. Communicate key information from source water assessments to stakeholders to guide priority actions and advance protection. Assist with integration of source water assessment and planning work with resiliency assessment and planning.
- e. Communicate data from water quality monitoring with public water system operators, community officials, other agencies.

## **Drinking Water Protection Program**

**OHA #179426-0**

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- f. Implement water quality monitoring plans, as needed and with OHA input, for high-risk source waters supplying both surface water and groundwater.
- g. Encourage consideration of source water protection needs into local land acquisition and management strategies; provide information to communities on opportunities for grants and funds for property acquisition or development of conservation easements within their source area.

### **5.2.5 Coordination with Partners**

- a. Serve as the lead agency in coordinating drinking water source protection activities with other state and federal agencies in Oregon (e.g., ODA, ODF, WRD, ODFW, DLCD, NRCS, USFS, and BLM).
- b. Communicate key information from source water assessments, water quality monitoring and other watershed analysis to state and federal partners to guide priority actions and advance protection.
- c. Coordinate with the federal/state Drinking Water Providers Partnership to ensure grant projects are protective of state drinking water resources and raise awareness of State Revolving Grants.
- d. Assist NRCS with identifying Source Water Protection Readiness and Implementation Projects. Assist local partners as they prepare watershed assessments and outreach strategies to address agricultural-related impacts to source water quality under the NRCS SWP program.

### **5.3 JOINT RESPONSIBILITIES**

OHA and DEQ agree to work together and cooperate in efforts as necessary for efficient and effective administration, management and operation of the Program, including, but not limited to:

- a. Joint review of relevant proposed rule revisions;
- b. Reporting of information and preparing quarterly activity updates and annual summary reports of accomplishments;
- c. Attendance and participation at annual EPA meetings, staff training, public information and workshops, and other activities that are needed to carry out the Program;
- d. Ensuring compliance with federal and state laws and regulations applicable to the Program, including but not limited to EPA programmatic and grant requirements; and
- e. Tracking and reporting program progress and performance measures that include evaluation of the specific reports/materials prepared for individual public water systems and actions taken as a result of the technical assistance provided by OHA and DEQ for drinking water protection and surveys of user satisfaction with services and products made available.

## **SECTION 6: COMPENSATION AND PAYMENT TERMS**

The Act allows states to use up to ten percent of the annual Capitalization Grant allotment to delineate and assess source water protection areas and to assist communities to develop and implement local drinking water protection programs. These funds, from the Local Assistance and Other State

## **Drinking Water Protection Program**

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Programs set aside, shall be allocated between the Parties of this Agreement to accomplish tasks listed in Agreement, Section 5. CFDA Number: **66.468**

The budget for the period of this Agreement is **\$1,932,171.00**. OHA will reimburse DEQ for actual costs of work authorized by this Agreement. Actual costs include but are not limited to salary, other payroll expenses, indirect cost, overhead and other related direct costs.

OHA will make payment within thirty (30) days of receipt of invoices from DEQ. Invoices will be sent to OHA Accounting Contact: Samina Panwhar, 800 NE Oregon, Suite 611, Portland, OR 97232.

OHA and DEQ will consult when preparing their respective annual and biennial budgets to implement this Agreement. Budgets to implement this Agreement will come from the Local Assistance and Other State Programs set aside of Oregon's Drinking Water State Revolving Fund Capitalization Grant, which will not exceed ten percent of the annual allotment. **Budgets will remain within and depend upon the annual federal allotment of Oregon's Drinking Water State Revolving Fund Capitalization Grant, which will vary from year to year.** The Parties will coordinate on preparation of annual state budgets, potential revisions as necessary due to federal budget adjustments, Annual and Biennial Reports to EPA, and will assist each other in budget presentations and evaluations/audits as appropriate.

## **SECTION 7: TERMINATION**

**7.1** This Agreement may be terminated at any time by mutual written agreement of the Parties.

**7.2** A Party may terminate this Agreement upon 30 days written notice to the other Party.

**7.3** A Party may terminate this Agreement immediately upon written notice to the other Party, or at such later date as the terminating Party may specify in such notice, upon the occurrence of any of the following events:

**7.3.1** The terminating party fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient in the terminating Party's reasonable administrative discretion, to perform its duties under this Agreement;

**7.3.2** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;

**7.3.3** The other Party materially breaches a covenant, warranty or obligation under this Agreement, or fails to perform its duties within the time specified in this Agreement or any extension of that time, or so fails to pursue its duties as to endanger that Party's performance under this Agreement in accordance with its terms, and such breach or failure is not cured within 20 days after delivery of the terminating Party's notice to the other Party of such breach or failure, or within such longer period of cure as the terminating Party may specify in such notice.

## **SECTION 8: AMENDMENTS**

The terms of this Agreement may not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement of the Parties.

## **SECTION 9: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section 9.

## **SECTION 10: SURVIVAL**

All rights and obligations shall cease upon termination of this Agreement, except for those rights and obligations that by their nature or express terms survive termination of this Agreement. Termination shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## **SECTION 11: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 12: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

## **SECTION 13: LIABILITY AND INSURANCE**

- 13.1** The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260 to 30.300). Each Party agrees to accept that coverage as adequate insurance of the other Party with respect to personal injury and property damage.
- 13.2** The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of, or activities under, this Agreement shall be allocated, as between the Parties, in accordance with law by Risk Management of the Department of Administrative Services for purposes of the Parties' respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to the Agreement agrees to notify Risk Management and the other Party in the event it receives notice or knowledge of any claims arising out of the Parties' performance of, or activities under, this Agreement.

## **SECTION 14: DAS REPORTING REQUIREMENT**

OHA shall be the Reporting Party for purposes of ORS 190.115, Summaries of Agreements of State Agencies. FIRST AGENCY shall submit a summary of this Agreement to the Oregon Department of Administrative Services through [OregonBuys](#) within the 30-day period immediately following the Effective Date of the Agreement.

## **SECTION 15: RECORDS**

The Parties shall create and maintain records documenting their performance under this Agreement. The Oregon Secretary of State's Office, the federal government, the other Party, and their duly authorized representatives shall have access to the books, documents, papers, and records of a Party that are directly related to this Agreement for the purposes of making audit, examination, excerpts, and transcripts for a period of six years after termination of this Agreement.

## **SECTION 16: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws and regulations.

## **SECTION 17: NO THIRD PARTY BENEFICIARIES**

OHA and DEQ are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

## **SECTION 18: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

## **SECTION 19: MERGER, WAIVER and MODIFICATION**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

## **SECTION 20: SUBCONTRACTS AND ASSIGNMENT**

- 20.1** Neither Party may enter into any subcontracts for the performance of any of its obligations under this Agreement, without the prior written consent of the other Party.
- 20.2** Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

## **SECTION 21: ADDITIONAL PROVISIONS**

RESERVED.



OHA #179426-0  
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IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the dates set forth below.

STATE OF OREGON acting by and through its Oregon Department of Environmental Quality:


  
\_\_\_\_\_  
Leah Feldon, Director

06/15/2023  
\_\_\_\_\_  
Date

STATE OF OREGON acting by and through its Oregon Health Authority, Center for Health Protection:

\_\_\_\_\_  
Samina Panwhar, Manager  
Drinking Water Services

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Andre Ourso, MPH, JD, Administrator  
Center for Health Protection

6/21/2023  
\_\_\_\_\_  
Date



**OPERATING AGREEMENT:  
Drinking Water State Revolving Fund  
(DWSRF)**

**Implementation & Management of the Program**



**Between the  
Oregon Health Authority – Drinking Water Services  
State of Oregon  
And  
U.S. Environmental Protection Agency**

OHA Agreement #167726

2021-2026

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Attachment 3 State Environmental Review Process (SERP) – <i>available online or upon request</i>	
Attachment 4 State Regulations – <i>available online or upon request</i>	

## ACRONYMS

• ARRA	-	American Recovery and Reinvestment Act
• AWIA	-	America’s Water Infrastructure Act
• CWSRF	-	Clean Water State Revolving Fund
• DEQ	-	Department of Environmental Quality
• DWS	-	Drinking Water Services
• DWSRF	-	Drinking Water State Revolving Fund
• EPA	-	Environmental Protection Agency
• EPA-ACH	-	Automated Clearinghouse
• ER	-	Environmental Review
• ERP	-	Enforcement Response Policy
• ETT	-	Enforcement Targeting Tool
• FFATA	-	Federal Funding Accountability and Transparency Act
• FFY	-	Federal Fiscal Year
• FSRS	-	FFATA Subaward Reporting System
• GAAP	-	Generally Accepted Accounting Principles
• GASB	-	Government Accounting Standards Board
• IAA	-	Inter Agency Agreement
• IFA	-	Infrastructure Finance Authority
• IUP	-	Intended Use Plan
• MOU	-	Memorandum of Understanding
• NIMS	-	National Information Management System
• OA	-	Operating Agreement
• OFS	-	Office of Financial Services
• OHA	-	Oregon Health Authority
• OIG	-	Office of Inspector General
• OBDD	-	Oregon Business Development Department
• ORS	-	Oregon Revised Statutes
• PBR	-	Public Benefits and Reporting
• PPL	-	Project Priority List
• RA	-	Regional Administration
• SDWA	-	Safe Drinking Water Act
• SDWRLF	-	Safe Drinking Water Revolving Loan Fund
• SERP	-	State Environmental Review Process
• SFY	-	State Fiscal Year
• SPM	-	State Program Management
• WIIN	-	Water Infrastructure Improvements for the Nation Act

## I. INTRODUCTION

### A. Background & Objective of the DWSRF

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104-182) has authorized the creation of a Drinking Water State Revolving Fund (DWSRF) program to assist eligible public water systems to finance the costs of infrastructure needed to achieve or to maintain compliance with SDWA requirements and to protect public health. Section 1452 has authorized the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to States, which in turn can provide low cost loans and other types of financial assistance to these systems.

The SDWA Amendments of 1996 also established a strong new emphasis on preventing contamination problems through source water protection and enhanced water systems management. Central to this emphasis is the development of State prevention programs, including source water protection, capacity development, and operator certification. States have the option to use a portion of their capitalization grants to fund these eligible activities as allowed in the federal statute. The success of these activities will act to safeguard the DWSRF funds that are provided to these eligible systems for improving compliance and public health issues.

It is the intent of the DWSRF program to help provide additional assurance that our Nation's drinking water remain safe and affordable, that drinking water systems which receive funding will be properly operated and maintained, and that effectively managed and permanent institutions will exist in each State to provide financial support for eligible public water systems and drinking water related needs for years to come. Congress has placed particular emphasis on assisting smaller drinking water systems, and those serving less affluent populations, by providing greater funding flexibility for these systems under the DWSRF to ensure that systems have adequate technical, managerial, and financial resources to maintain compliance and provide safe drinking water.

Under the SDWA, a State may administer its DWSRF in combination with other State loan funds, including the Clean Water State Revolving Fund (CWSRF). A State may also transfer up to one third of the amount of its DWSRF capitalization grant to its CWSRF or an equivalent amount from its CWSRF capitalization grant to its DWSRF.

These two provisions linking the DWSRF and the CWSRF signal Congressional intent to implement and manage both programs in a similar manner. EPA also intends to administer the two programs in a consistent manner, and to apply the principles developed for the existing CWSRF to the DWSRF program to the fullest extent possible.

Like the CWSRF, the DWSRF is fundamentally a State program. Each State will have considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. Historically, only minimal Federal requirements have been imposed. However, since the 2009 American Recovery and Reinvestment Act (ARRA), Federal requirements (e.g., America's Water Infrastructure Act (AWIA) and the Water Infrastructure Improvements for the Nation Act (WIIN)) have evolved which add additional procedures and oversight requirements at both the Federal and State levels.

The SDWA Amendments of 1996 authorized \$559 million for Federal Fiscal Year (FFY) 1994, and \$1 billion per FFY from 1995 through 2003 for such grants. Funds available to States from FFY1998 appropriations and beyond are to be allotted according to a formula that reflects the proportional share of each State's needs identified in the 1995 Needs Survey conducted pursuant to Section 1452(h). EPA will conduct a Needs Survey periodically (i.e., every 4 years). The minimum proportionate share by the formula is one percent of the funds available for allotment to the States. To date, Oregon's share has ranged anywhere from one percent (1%) to as much as 1.76% (i.e., 2002 – 2020 State allotments).

## **B. Purpose, Format & Structure of the Operating Agreement for Oregon**

This amended DWSRF Operating Agreement (OA) continues the contractual relationship between EPA and the Oregon Health Authority (OHA) and this amended OA replaces and supersedes the prior Operating Agreement: Drinking Water State Revolving Fund between EPA and OHA.

The purpose of this amended OA is to redefine and further integrate rules, regulations, guidelines, policies, procedures, and activities to be followed by EPA and the State in administering the DWSRF prescribed by Section 1452 of the 1996 SDWA amendments that are not expected to change annually. In addition, the amended OA is to demonstrate the areas where updates have been made to either or both agencies and how if any of these updates will impact the DWSRF program.

In summary, this OA specifically lists the parties to the Agreement; outlines and defines the roles and responsibilities of all the parties involved; documents the necessary assurances; explains the financial administration framework; discusses reporting and review requirements of the DWSRF program; and explains how the program will be carried out.

This OA will continue from year to year and will be incorporated by reference into the annual DWSRF capitalization grant agreement. Information that changes from year to year shall be in Oregon's annual capitalization grant agreement and in the Intended Use Plan (IUP).

OHA agrees that any modifications to this agreement that may be required by EPA regulations, policies, or program guidance, will be made and implemented where applicable on such schedule as negotiated with EPA.

This amended OA addresses many of the State requirements for the capitalization grant agreement for the DWSRF program as outlined in the Table 1 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).”

### **C. Timing & Application Review**

Upon implementation of this OA, EPA agrees to review the capitalization grant application and take appropriate action within 60 days of receipt of a completed application (Application for Federal Assistance with supporting document and certifications and any modifications to the OA, the annual IUP, and proposed payment schedule) in the Regional Office. EPA shall either approve the application and award the capitalization grant or shall notify OHA in writing of issues requiring resolution. OHA and EPA agree to negotiate promptly, cooperatively, and in good faith to clarify or resolve questions which may arise during review of the application. OHA agrees to act upon the capitalization grant offer within 21 calendar days of approval.

## **II. IMPLEMENTATION**

### **A. Parties to the Agreement**

The parties to this OA are the U.S. EPA Region 10 and OHA. OHA as the primary enforcement agency for the SDWA is designated by the State of Oregon as the lead agency, which in addition to developing the Intended Use Plan (IUP), performing technical project reviews, and monitoring program results, is responsible for coordinating the total management of the DWSRF program and is the primary contact for the EPA on DWSRF issues. OHA, as the designated instrumentality of the State of Oregon, is empowered to enter into capitalization grant agreements with the Regional Administrator (RA), to accept capitalization grant awards, and to otherwise manage the fund in accordance with the requirements and objectives of the SDWA.

OHA had a Memorandum of Understanding (MOU) with Oregon Business Development Department (OBDD) to manage a separate DWSRF account to make loans and other forms of financial assistance to eligible public water systems. This separate account is the Safe Drinking Water Revolving Loan Fund (SDWRLF) which is capitalized through Oregon’s annual DWSRF capitalization grant awards. The SDWRLF includes Federal grants, State match, loan repayments, and interest earned funds. OBDD (also known as Infrastructure Finance Authority or IFA) acts as the financing project managers for the DWSRF program.

The MOU was replaced with an Inter-Agency Agreement (IAA) between OHA and OBDD (i.e., IFA) effective February 1, 2016.

**B. Summary of State and EPA Roles and Responsibilities**

1. The State of Oregon has enacted enabling DWSRF legislation. **Attachment #1 is a copy of that legislation.**
2. As the lead agency, OHA will maintain a competent organization and a staff skill mix to assure that projects meet acceptable technical, managerial and financial requirements as established or referenced in this OA, and that the DWSRF will be operated continuously and effectively. Staffing plans of all State agencies involved will be submitted as part of the annual capitalization grant application and/or referenced within the program's annual report.
3. Oregon has a State Environmental Review Process (SERP). OHA will apply the SERP described in Section 5.1 of Oregon's current Program Guidelines and Handbook for SDWRLF financing. The SERP handbook can be accessed on the DWS website at <http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/SRF/Documents/srphand.pdf>. Oregon will use its State Fiscal Year (SFY), July 1 through June 30 to manage the DWSRF activities.
4. EPA agrees to provide funding through the award of a capitalization grant to OHA, upon joint acceptance of this OA and approval of a completed application agreement in accordance with 40 CFR Part E, Section 1452, and as the Federal funds are available for this purpose.
5. EPA will provide Federal grant funds to the DWSRF in accordance with the jointly developed payment schedule as a condition of the capitalization grant.
6. EPA may provide technical assistance to OHA as needed and will be available to assist OHA in developing and conducting in-servicing training programs and will provide advice and consultation.
7. OHA, upon receiving its capitalization grant, agrees to manage the DWSRF program in accordance with this OA, the terms of the grant agreement, the SDWA as amended, 40 CFR Part E Section 1452, and applicable regulations.
8. EPA will allow OHA as much discretion and flexibility in implementing and managing a DWSRF program as is permissible under the SDWA, the regulations and EPA policy/guidance.
9. EPA will oversee the State's DWSRF program to assure compliance with the SDWA, regulations and EPA policy/guidance. Generally, specific projects for



which the State has provided financial assistance will not be reviewed, except during an annual review. If evidence of non-compliance with the applicable requirements exists, EPA may conduct specific project reviews.

If the annual review or audit reveals that the State has not complied with its capitalization grant agreement or other requirements under Section 1452, EPA will notify the State of such non-compliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet assurances or invalid certifications, is grounds for a finding of non-compliance.

### **C. State Assurances and Certifications**

The State is responsible for providing assurances in the capitalization grant agreement on how it will comply with those assurances or elements of the DWSRF program, as well as other requirements for all DWSRF funding to comply with applicable Federal requirements. In some cases, the State must simply agree or provide certification in the grant application that it will comply with the specifications. In other cases, additional documentation on the procedures by which the State plans to ensure compliance with the specifications must be furnished. This OA documents the State's agreement to many of these requirements. The following addresses the way the State will meet many of these assurances and requirements:

#### **1. State Instrumentality and Authority**

The State of Oregon has established a DWSRF created by legislation enacted by the Oregon Legislature. A copy of Oregon's enabling legislation is included in this OA in Attachment #1. This legislation grants OBDD the authority to adopt procedures, rules, and regulations, and establishes that agency as the instrumentality of Oregon to manage and operate the SDWRLF (i.e., Loan Fund) account. The State Attorney General certifies legislation grants powers and authorities necessary to implement and administer the SDWRLF account consistent with the SDWA, as amended.

If more than one State Agency is involved in the DWSRF program, the State will describe the roles and responsibilities of each agency in the grant application. OHA will submit or provide access to a copy of the IAA that describe the roles and responsibilities between state agencies as part of its grant application. The State agrees that the agency that is awarded the capitalization grant must retain ultimate responsibility for properly executing the grant agreement under federal grant regulations (40 CFR 31.3).

## **2. Establishment of SDWRLF and Non-Project DWSRF Accounts**

OHA certifies that the SDWRLF account is a separate account, dedicated solely to providing loans and other forms of assistance for the construction of Section 1452 public water supply systems.

OHA agrees to deposit the capitalization grant in the SDWRLF account except for those portions of the grant that OHA intends to use for non-project (e.g., Set-Asides) authorized under the SDWA (Section 1452 (a)(1)(B)). The State will maintain identifiable and separate accounts for the portions of the capitalization grant to be used for non-project activities. OHA will maintain any paperwork provided by EPA that documents any transfer of funds from the non-project account to the SDWRLF and include this information in its annual report.

## **3. Payment Schedule**

OHA will include in its annual DWSRF grant application a proposed payment schedule.

OHA agrees to accept grant payments in accordance with the negotiated payment schedule.

## **4. State Matching Funds**

Except for payments made from the Federal Fiscal Year (FFY) 1998 appropriations, OHA agrees that State monies in an amount equaling 20 percent of the amount of each grant awarded will be deposited in to Oregon's SDWRLF on or before the date on which the State receives each payment from the grant award or the State will utilize other measures for depositing the State match allowable under Section 1452 of the SDWA. Each annual DWSRF grant application will include details on the source of State matching funds.

State Program Management (SPM) Set-Aside (i.e., 1452(g)(2)) activities no longer require the dollar for dollar (i.e., 1:1 ratio) State match requirement according to the passing of the 2016 WIIN Act.

## **5. Entering into Binding Commitments with Assistance Recipients**

OHA through its IAA with OBDD agrees to enter into binding commitments (financing contracts) with assistance recipients within one year of receiving a capitalization grant payment. Binding commitments (financing contracts) will be in place according to the time frames established by the OBDD and the assistance recipient(s).

## **6. Expeditious and Timely Expenditures**

OHA through its IAA with OBDD agrees to expend all funds in an expeditious and timely manner.

## **7. Enforceable Requirements of the Act**

OHA agrees that all funds available for loans in the SDWRLF account are a result of a capitalization grant (DWSRF grant funds, State match, repayments and interest earned) will be used for projects on the Project Priority List (PPL).

## **8. Applicable State Laws and Procedures**

OHA agrees to commit or expend each quarterly grant payment in accordance with all applicable Federal and State laws, statutes, policies and procedures.

## **9. State Accounting and Auditing Procedures**

OHA has established fiscal controls and accounting procedures sufficient to assure sound accounting procedures promulgated by the Government Accounting Standards Board (GASB). The State of Oregon agrees to follow current procedures in accordance with the general accepted government auditing standards issued by the Comptroller General of the United States.

## **10. SDWRLF Assistance Recipient Accounting and Audit Procedures**

OHA agrees that it will require SDWRLF assistance recipients to maintain project accounts in accordance with “generally accepted government accounting principles.” This requirement has been implemented and will continue to be implemented through an existing condition in the financial assistance agreement.

OBDD continues to implement financial oversight of all funded projects. See their contract language excerpt below:

### **a) Financial Records**

The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.

b) Inspections; Information

The Recipient shall permit the OBDD and any party designated by OBDD, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.

c) Records Maintenance

The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.

## **11. Biennial Report and Annual Audit**

OHA agrees to submit an Annual Report to the EPA on the use of funds and how the State has met the goals and objectives for the previous state fiscal year as identified in the IUP for the previous year. The scope of the report covers the SDWRLF and all other non-Fund activities undertaken by the State using funds in the DWSRF program. The contents of the report will conform to what is outlined in Section VI.A., of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)." The State of Oregon may have an independent audit by the State's Auditor (Secretary of State, Audits Division), of the program as part of the State's Statewide Single Audit (OMB A-133).

## **12. Environmental Review (ER)**

OHA agrees that binding commitments on DWSRF projects will require that the recipient completes the necessary environmental review process and the review is approved by OHA.

OHA has an approved SERP for the DWSRF Program. The SERP documentation, in accordance with Section IV.B., of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214),” is available upon request. The OHA is the State Agency primarily responsible for conducting the appropriate environmental reviews.

### **13. Intended Use Plan (IUP)**

OHA agrees to prepare an annual IUP and to provide for public review and comment on the IUP. OHA agrees to include the annual IUP with the annual application for the DWSRF capitalization grant. This IUP shall include a list of projects proposed for assistance, long-term and short-term goals of the DWSRF program, information on DWSRF activities to be supported, criteria and methods for distributing DWSRF funds, and assurances and specific proposals. The State will provide the IUP and attach information in accordance with Section 1452 and in a format mutually agreeable to OHA and EPA’s Regional Administrator. OHA agrees to expend all DWSRF program funds in accordance with the IUP.

### **14. Repayment to the Fund**

OHA agrees that all principal and interest payments on loans and returns on invested project SDWRLF funds will be credited directly to the SDWRLF account.

### **15. State Technical Capability**

OHA agrees to provide documentation demonstrating that it has adequate personnel and resources to establish, operate and manage the DWSRF program as part of the annual capitalization grant application package.

### **16. Compliance with Applicable Federal Cross-Cutting Authorities**

OHA agrees that as a condition of receiving project funds, recipients must comply with applicable federal cross-cutting authorities in existence at the time that a loan recipient receives a binding commitment from the SDWRLF. OHA agrees to inform EPA when consultation or coordination is necessary to resolve issues regarding compliance with those requirements.

The crosscutters will apply to an amount of funds equaling at least the amount of the Federal grant. OHA through its IAA with OBDD will determine which “equivalency” projects will be subject to federal crosscutters. OHA agrees that it will remain ultimately responsible for ensuring that assistance recipients comply with all applicable crosscutters. OHA acknowledges that applicable laws may change with time.

## **17. Procedures to Assure Borrowers have Dedicated Source of Repayment**

Under the new IAA, OHA agrees to ensure that OBDD will make determinations whether an applicant has the ability to repay a loan according to its terms and conditions, prior to making that loan. OHA will also ensure that OBDD will develop criteria to evaluate an applicant's financial ability to repay the loan, in addition to being able to pay for operation and maintenance costs, and other necessary expenses.

## **18. Capacity Development Authority**

OHA has legal authority to ensure that all new community water systems and new non-transient, non-community water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity in accordance with Section 1420 of the SDWA. EPA has the legal authority to withhold DWSRF funds under Section 1452 (a)(1)(G)(i) if the State has not established a Capacity Development Program.

## **19. Operator Certification**

OHA administers an Operator Certification Program for operators of community water supply systems and non-transient, non-community water supply systems in accordance to Section 1419 of the SDWA. EPA has the legal authority to withhold DWSRF funds under Section 1452 (a)(1)(G)(ii) if the State does not have an Operator Certification Program in accordance with Section 1419.

## **20. Review of Technical, Financial, and Managerial Capacity of Assistance Recipients**

OHA has implemented a method to review and evaluate the technical, financial, and managerial capacity of assistance recipients. OHA may revise this methodology from time to time as experience is gained.

In addition, on March 30, 2012, the States received a memorandum "Implementation of Capacity Development and DWSRF Programs to Reflect the New Enforcement Policy (ERP) and Enforcement Targeting Tool (ETT)" from the EPA with new mandated requirements to be implemented in to State's existing Capacity Development Programs. OHA has incorporated these requirements into its Capacity Development and DWSRF programs.

## **21. System to Minimize Risk of Waste, Fraud, Abuse and Corrective Action**

OHA agrees to devise and institute measures which will alert its staff to project deficiencies as they emerge, and which will set forth state actions to correct such

deficiencies as quickly as possible so as to preclude the need for corrective action by the EPA. If the recipient of financial assistance from the State's SDWRLF funds exhibits evidence of waste, fraud or abuse, the State will impose sanctions on the recipient. Section VI.B.3 of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)" outlines procedures and potential actions to be taken by EPA and OHA in the event non-compliance is determined.

In addition, annually the EPA distributes "Final SRF Procedures" which outlines DWSRF Program requirements following the FFY appropriation announcements.

## **22. Development and Submittal of a Project Priority Ranking System**

OHA and OBDD have a Project Priority Ranking System to determine the annual Project Priority List (PPL) required as part of the IUP, and after public review and comment, it will be submitted as part of the capitalization grant application. This system describes by-pass procedures which clearly identify the conditions that allow a project to be by-passed and the way OHA and OBDD will identify which projects by-passed will receive the funds.

### **D. Financial Administration of the Fund**

#### **1. Assistance Provided by the DWSRF and the SDWRLF Account**

OHA certifies that only the types of assistance authorized under Section 1452 of the SDWA and the current "Program Guidelines and Handbook" will be awarded. The type of assistance for each DWSRF project shall be identified in the IUP and/or the Annual Report.

##### a) Direct Loans

OHA shall require loans for projects to be made only if all principal and interest payments on loans are credited directly to the SDWRLF. The annual repayment of principal and payment of interest will begin no later than one year after project completion. Most loans will fully amortize not later than 30 years after project completion. Each loan recipient will establish one or more dedicated source of revenue repayment for the loan. Where construction of a project will be phased or segmented, loan repayment requirements apply to the completion of individual phases or segments.

b) Refinancing

The SDWRLF may buy or refinance local debt obligations at or below market rates where the initial debt was incurred and construction initiated after July 1, 1993.

c) Guarantee or Purchase Insurance

The DWSRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The DWSRF may also purchase or provide bond insurance to guarantee debt service payment.

d) Guarantees DWSRF Debt Obligations

The DWSRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State provided the net proceeds of the sale of such bonds are deposited in the DWSRF.

e) Earn Interest on Fund Accounts

The SDWRLF may earn interest on SDWRLF project accounts.

f) Administrative

OHA may use up to, but no more than four percent (4%), of the capitalization grant for costs of administering the DWSRF program. A separate account must be established for the use of the 4% Administrative Expense Set-Aside. Allowable administrative costs include: All costs incurred for management of the DWSRF program and for management of projects receiving financial assistance from the SDWRLF account. Reasonable costs unique to the DWSRF, such as costs of servicing loans and issuing debt, DWSRF program start-up costs, financial management, and legal consulting fees, and reimbursement costs for support services from other state agencies are also allowable. Expenses incurred issuing bonds guaranteed by the DWSRF, including costs of ensuring the issue, may be absorbed by the proceeds of the bonds and need not be charged against the 4% administrative costs ceiling. The net proceeds of those issued must be deposited in the SDWRLF.

g) Leveraging

The SDWRLF account may be used for leveraging. At such time as the leveraging of funds is determined to be appropriate, a proposed leveraging plan will be submitted to EPA for review and approval.



## 2. Process

### a) Binding Commitments

OHA through its IAA with OBDD agrees to enter into binding agreements with assistance recipients under the DWSRF program. Binding commitments must be made in an amount equal to each quarterly grant payment and proportional state match, within one year after receipt of each grant payment. Projected schedules for commitment of SDWRLF funds to specific projects shall be provided in the annual IUP.

### b) Payments

#### i. State Match

OHA agrees that state monies in an amount equal to at least twenty percent (20%) of each capitalization grant award will be deposited into the SDWRLF. The money may be made available from any or all of the following sources: State appropriations, state issued General Obligation bonds, revenues from state taxes or assessments and funds maintained in other state accounts. The source of the state match will be specified in the grant application and/or the Annual Report.

The 20% state match will be deposited in the SDWRLF account on or before the date such payments are provided under the Automated Clearinghouse (EPA-ACH) Payment System.

#### ii. EPA-ACH Payment System

OHA agrees to use the EPA-ACH Payment System and will follow EPA-ACH Payment System procedures indicated in the EPA-ACH Payment System Recipients' Manual, [http://www.epa.gov/ocfo/finservices/recipient\\_manual.pdf](http://www.epa.gov/ocfo/finservices/recipient_manual.pdf).

EPA will authorize payments from ACH as provided for in the payment schedule as shown in the assistance agreement. Once a payment has been made by increasing the amount of funds available for cash draw in the ACH Payment System, EPA will not reduce that amount. OHA agrees to keep DWSRF cash draws separate from those of any other programs. OHA agrees to follow those EPA-ACH Payment System procedures specific to the DWSRF program listed in Exhibit J of the EPA-ACH Payment System Recipients' Manual.

iii. Payment Timing

The schedule of payments is based on the projected schedule for binding commitments included in the State's annual IUP and/or Annual Report.

iv. Separate Account

The SDWRLF Project Account is a separate account within the State's DWSRF program dedicated solely to providing loans to eligible public water systems.

c) Cash Draws

i. Rules of Cash Draw

Cash draws from the EPA-ACH Payment System are limited by the payment schedule shown in the assistance agreement and the rules of the cash draw. Money will be transferred to the DWSRF from the U.S. Department of Treasury in accordance with established EPA-ACH Payment System procedures. OHA agrees to make cash draws in accordance with the Payment Schedule as illustrated and submitted in its annual DWSRF grant application.

Loans

OHA may draw cash from the DWSRF-ACH when the SDWRLF receives a request from a loan recipient, based on incurred costs, including pre-construction and construction costs.

Refinancing and Purchase of Local Debt

For completed construction, cash draws will be made at a rate no greater than equal amounts over the maximum number of quarters that capitalization grant payments are made, and up to the portion of the DWSRF-ACH committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs. For projects or portions of projects that have not been constructed, cash may be drawn based on incurred construction costs according to the rule for loans.

For Bond Insurance

Cash draws will be made as premiums are due.

#### For Guarantees

In the event of an imminent default in debt service payments on a guaranteed or secured debt, OHA can draw cash immediately up to the total amount of the DWSRF-ACH that is dedicated to guarantee or security.

#### For Leveraging

If used, cash draws will be made in accordance with State leveraging plan submitted to the EPA for review and approval.

#### d) Disbursements

##### i. Process

OHA agrees to disburse funds from the DWSRF project account (i.e., SDWRLF) and Set-Aside accounts as costs are incurred.

##### ii. Construction Progress

OHA through its IAA with OBDD agrees to ensure that periodic inspections are conducted to review construction progress in order to coordinate outlay requests. Construction inspections and outlay procedures will be documented by the State.

#### e) Transfer of Funds to/from Clean Water SRF

A State may transfer up to a third of the amount of its DWSRF capitalization grant to its CWSRF or an equivalent amount from its CWSRF capitalization grant to its DWSRF (Title III, Section 302 of the SDWA Amendments of 1996). The State agrees to identify, document, and justify whatever transfers take place by submitting a plan for EPA review and approval.

### **E. Program Administration**

#### **1. Staffing and Management**

OHA agrees to maintain the staff and other necessary resources to effectively administer the DWSRF program.

#### **2. Accounting and Audit Procedures**

OHA agrees to use an accounting system which meets applicable Federal regulations and policies regarding grants to States. The accounting system will

properly identify and relate State costs to the operation of the DWSRF program. To ensure that the accounting system properly reflects the full range of cost reporting needs of the program and provides for an audit trail with clearly definable bench marks, an auditor from EPA's Office of Inspector General (OIG), or a senior accountant from the financial management office of the Region may review and concur in the system's framework and operation.

OHA may have independent reviews of the DWSRF and the operation of the DWSRF. Such reviews will follow procedures in accordance with general accepted government auditing standards issued by the Comptroller of the United States. The engagement report will be submitted to the Regional Administrator, with a copy sent to EPA's OIG.

EPA agrees to notify OHA within 90 calendar days as to the technical adequacy of any audit report and its findings.

### **3. Fund Perpetuity**

OHA agrees to consider the long-term health and viability of the fund when selecting its mix of project categories for SDWRLF funding. Each year, OHA and OBDD through the IAA will assess the financial health of the SDWRLF by examining fund balances, sources of funds, and repayment stream and revise procedures as necessary to promote fund perpetuity.

### **4. Fund Maintenance**

OHA agrees to maintain the investment of cash in the same manner as it maintains other cash reserves.

## **F. Project Management and Review Procedures**

Project management and DWSRF management regulations and procedures (including project review procedures) are to be followed by OHA in administering projects under the DWSRF program as set forth in Oregon's current "Program Guidelines and Handbook" and applicable administrative rules and statutes. OHA through its IAA with OBDD agree to review projects in accordance with those criteria and to document thoroughly the project file confirming that review.

## **G. Development of the Intended Use Plan (IUP)**

Each year, an IUP will be developed and presented for public review and comment prior to submission to the EPA. To determine which projects should be funded, the most up-to-date PPL as developed under the established priority system will be reviewed.

Allocation of SDWRLF funds among these projects is a three-step process. The type of financial assistance needed for each community is determined, the source and limits of all that fiscal year's funds are identified, and the SDWRLF funds are allocated among the projects, consistent with the amount available and the financial assistance needed. Refer to the IUP for charts, figures, and any programmatic updates for the current year.

The required items of the IUP are described in detail in Section I.B., of the "Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214)." The IUP is the central component of the capitalization grant application (Section 1452 (b)), which describes how the State intends to use available funds for the year to meet the objectives of the 1996 SDWA amendments.

OHA will provide IUP information in a format and a manner that is consistent with the needs of the EPA Regional Office. OHA will prepare an IUP as long as the DWSRF program remains in operation, not just in those years in which the State submits an application for a Federal capitalization grant.

The IUP will include, but not be limited to the following:

1. List of projects, including description and size of community
2. Description of the criteria and method for the distribution funds
3. Description of financial status of the DWSRF
4. Description of the future years of the Program
5. Description of the amount transferred between the DWSRF and CWSRF
6. Description of the non-SDWRLF project activities, and percentage of funds that will be funded from the DWSRF capitalization grant, including DWSRF Set-Asides.
7. Description of how a State will define a "disadvantaged" system and the amount of SDWRLF funds that will be used for this type of loan assistance.
8. Documentation, certification and agreement to Assurances and proposals in the areas including, but not limited to: Environmental Review; Federal Crosscutters; Binding Commitments; and Timely expenditures.

As part of the IUP, OHA agrees to identify what portion of the capitalization grant will be used for Set-Aside activities. OHA agrees to establish separate Set-Aside

account(s) in order to accept these targeted funds. OHA also agrees to provide the same level of detail for projects funded through the Set-Aside accounts as is required for the SDWRLF itself.

### **III. REPORTING AND REVIEW**

#### **A. Biennial Report / Annual Report**

OHA agrees to complete and submit an Annual Report to meet the Biennial/Annual reporting requirement (Section 1452 (g)(4)). The Report details information on how the State has met the goals and objectives of the previous state fiscal year as stated in the IUP and grant agreement. The contents and required elements of the Annual Report will conform in accordance with Section VI.A.1 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).” The Annual Report is required for the life of the DWSRF program. Report submittal date will be included in the grant agreement. At a minimum, this report shall provide information as specified in the “EPA Federal Register’s Interim Final Rule (40 CFR Part 35).” It shall identify loan recipients, loan amounts, loan terms, project categories, progress of activities funded with Set-Aside dollars, and other details as negotiated between OHA, OBDD and EPA with emphasis on how it has met the goals set forth in the IUP and the financial health of the DWSRF program.

#### **B. Annual Audit**

The State of Oregon may conduct and submit an annual financial review in order to assure adequate financial management of the program in accordance with Section VI.A.2 of the “Final Guidelines for Implementation of the DWSRF Program (Fed Reg Vol. 63, No. 214).”

#### **C. Annual Review**

OHA and EPA will jointly plan the annual review process. An effective review requires the help and support of OBDD, DEQ, and the Office of Financial Services (OFS). However, EPA is responsible for determining whether federal requirements are adhered to and for assessing progress toward national goals and objectives. The Regional Administrator (RA) will complete the annual review according to the schedule established in the grant agreement.

In addition to the Annual Report, the IUP, and any financial reviews or audits, OHA agrees that other records the RA and EPA may reasonably require will be made available to use in conducting the annual review of the DWSRF program.

## **D. Sanctions and Compliance**

### **1. Corrective Actions**

If EPA determines that the State has not complied with the terms of the capitalization grant, this OA, or the IUP, the RA will notify OHA of the non-compliance and of the corrective action necessary. OHA will take corrective action or submit a plan to the EPA within 60 days that will lead to compliance.

If within 60 days of receipt of the non-compliance notice, OHA fails to take the necessary actions to obtain the results required by EPA, or provide an acceptable plan to achieve the results required, EPA may withhold future EPA-ACH System payments to the DWSRF until the State has taken acceptable actions. Once OHA has taken corrective action satisfactory to EPA, any withheld payments will be released and scheduled payments continued.

If OHA fails to take the necessary corrective action deemed adequate by EPA within twelve months of receipt of the original notice, any withheld payments shall be de-obligated and re-allotted to other States.

If EPA determines that capitalization grant funds were subject to waste, fraud or abuse, the capitalization grant may be recovered under procedures outlined in 40 CFR Part 31.

### **2. Disputes**

The “disputes” provisions of 40 CFR Part 31, Subpart F shall be used for disputes involving EPA disapproval of an application or a capitalization grant, as well as disputes arising under a capitalization grant, including suspension or termination of assistance.

## **E. National Reporting Needs**

Annually, OHA will provide the EPA with a specified set of project-level data in its PPL, IUP, Annual Report, and other information negotiated between the EPA and OHA.

## **F. Records and Data Management**

### **1. Files**

Under the IAA with OHA, OBDD will receive and review project documents from assistance applicants. These documents, together with OHA and OBDD review memos and the summary checklists, will be filed in official project files

maintained by OHA. OBDD will maintain the official financial review files and the project loan agreements. The project files shall be made available to the EPA for review based on reasonable notice by the EPA. It is expected that the files would be reviewed on a sample basis in conjunction with on-site visits scheduled as part of the Annual Review or otherwise to monitor OHA's management of the DWSRF funds.

## **2. Records Retention**

OHA through its IAA with OBDD will retain project files in accordance with 40 CFR Part 31. The State will arrange for the storage of certain records for a period if the repayment period on any DWSRF assistance, and otherwise in accordance with State law. All records will be retained by the State for the period agreed upon for repayment, plus three (3) years following completion of repayment.

## **3. Access to Records**

Access to all records in the possession of OHA will be in accordance with State laws governing access to information. Access to all records in the possession of the EPA will be in accordance with the U.S. Freedom of Information Act, P.L. 93-502.

Information related to the capitalization grant agreement and supporting documents located in the EPA Regional Office is available from EPA in accordance to the U.S. Freedom of Information Act.

## **4. National Information Management System (NIMS)**

A National Information Management System (NIMS) was developed by EPA in conjunction with the States for compiling a comprehensive and consistent set of data quantifying DWSRF activities. OHA agrees to enter relevant DWSRF information into the system when required to or as needed.

EPA will have access to information in the system as needed but will not be able to modify State entered data. EPA will utilize this information to assess the Program on a national basis and to monitor OHA progress annually. The Regional Offices will use the information to assist in conducting annual reviews.

### **a) Public Benefits and Reporting (PBR)**

EPA has developed the Public Benefits and Reporting (PBR) tool for project tracking. OHA agrees to enter relevant DWSRF information in to the PBR system, including adding new projects in the month following execution of an assistance agreement.



b) Federal Funding Accountability and Transparency Act (FFATA)

OHA also agrees to enter relevant Federal Funding Accountability and Transparency Act (FFATA) information into the FFATA Subaward Reporting System (FSRS) as required.

**IV. REVISING THE OPERATING AGREEMENT (OA)**

**A. Amendments**

This OA may be amended at any time by mutual agreement between the authorized signatories in writing. Revisions will be particularly considered following reviews of the Annual Report and/or Audit.

**B. Designated Officials**

All revisions regarding modifications to any attachment or procedures shall be through the designated officials indicated below.

Items significantly altering the OA and which effect program changes, may be implemented through the agreement of the designated officials named here or their successors:

1. For OHA: Andre Ourso, JD  
Administrator, Center for Health Protection  
Oregon Health Authority
2. For EPA: Chris Hladick  
Administrator, Region 10  
U.S. Environmental Protection Agency

Items not altering the OA, but involve changing implementation or review procedures, may be implemented through the agreement of the designated officials named here or their successors:

1. For OHA: André Ourso, JD, MPH  
Administrator, Center for Health Protection  
OREGON HEALTH AUTHORITY
2. For EPA: Karen Burgess, PE  
Chief, Groundwater & Drinking Water Sections  
Region 10  
U.S. Environmental Protection Agency

V. EXECUTION

A. Authority

The authority for this OA is found in the Oregon Revised Statutes (ORS) Chapter 448.

40 CFR Part E is the federal regulatory authority for the DWSRF program. Should any conflicts result between the federal regulations and the OA, the federal regulations will take precedence.

B. Effective Date and Signatures

This OA will be effective commencing on \_\_\_\_\_  
Date

\_\_\_\_\_  
Administrator, Region 10  
U.S. Environmental Protection Agency

\_\_\_\_\_  
Administrator  
Oregon Health Authority

Oregon Department of Justice  
*Approved via email by:*  
Erin Williams, AAG DATE