

Water Pollution Control State Revolving Fund Emerging Contaminants Intended Use Plan

State Fiscal Year 2024

Updated: 10/27/2023

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Water Quality Division

Water Pollution Control State Revolving Fund

1520 East Sixth Avenue

PO Box 200901

Helena MT 59620-0901

Phone: (406) 444-6697

Fax: (406) 444-6836

Website: www.deq.mt.gov



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MONTANA
WATER POLLUTION CONTROL STATE REVOLVING FUND
EMERGING CONTAMINANTS
SFY24 INTENDED USE PLAN

I. INTRODUCTION

The *primary* purpose of the Intended Use Plan (IUP) is to identify the proposed annual intended uses of the federal and state funds available to the Montana Water Pollution Control State Revolving Fund (WPCSRF) program. Federal dollars appropriated in one year are available for use in the next year (i.e., the FFY23 appropriation is available in FFY24). On November 15, 2021, the Bipartisan Infrastructure Law (BIL) was signed into law. The BIL reauthorized the WPCSRF program for federal fiscal years 2022 through 2026 with funding levels set through the annual appropriations process. With the enactment of BIL, starting in FFY22 Montana’s WPCSRF program will receive an emerging contaminants (EC) capitalization grant. These funds are to be provided as entirely forgivable loans and do not require State match. Montana’s WPCSRF federal EC grant for federal fiscal year 2023 is \$1,043,000. The draft IUP will be reviewed by the public and a meeting will be held to allow an opportunity to publicly comment on the draft IUP.

The IUP includes the following:

- I. Introduction
- II. Uses of the Water Pollution Control State Revolving Fund
- III. Transfer of EC Funds Between the WPCSRF and the DWSRF Programs
- IV. Goals and Objectives
- V. Information on the EC Activities to be Supported
- VI. Assurances and Specific Proposals
- VII. Anticipated Funding List
- VIII. EC Grant Financial Status
- IX. Public Comment, Amending IUP

For additional information regarding the WPCSRF overall programmatic requirement, please refer to the WPCSRF IUP dated July 1, 2023, and found on DEQ’s website.

II. USES OF THE WATER POLLUTION CONTROL STATE REVOLVING FUND

Montana’s WPCSRF program can use its EC grant to help eligible entities address emerging contaminants found in wastewater discharges and non-point sources. Emerging contaminants are characterized as substances and microorganisms, including manufactured or naturally occurring physical, chemical, biological, radiological, or nuclear materials, which are known or anticipated in the environment, that may pose newly identified or re-emerging risks to human health, aquatic life, or the environment. These substances, microorganisms or materials can include many different types of natural or manufactured chemicals and substances – such as perfluoroalkyl and polyfluoroalkyl substances (PFAS) as well as some compounds of personal care products, pharmaceuticals, industrial chemicals, pesticides, and microplastics.

III. TRANSFER OF FUNDS BETWEEN THE WPCSRF AND THE DWSRF PROGRAMS

At the Governor’s discretion, the state may transfer up to 33% of its Drinking Water SRF EC cap grant, on a cumulative basis, to the WPCSRF or an equal amount from the WPCSRF to the Drinking Water SRF. Information regarding transferring funds can be found in the March 8, 2022, memorandum entitled *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*.

Table 1 itemizes the amount of EC funds available for transfer and that have been transferred between the WPCSRF and DWSRF programs to date based on the SRF EC capitalization grants. It is not expected that any EC funds will be transferred from the DWSRF to the WPCSRF during the next 12 months.

TABLE 1 - AMOUNTS AVAILABLE TO TRANSFER BETWEEN STATE REVOLVING FUND EC PROGRAMS

Year	Transaction Description	Banked Transfer Ceiling	Transferred from WPCSRF to DWSRF	Transferred from DWSRF to WPCSRF	DWSRF Funds Available for Transfer	WPCSRF Funds Available for Transfer
2022	DW Grant Award	2,493,150	459,000	---	2,952,150	2,034,150
2023	DW Grant Award	5,014,350	---	---	5,473,350	4,555,350
Total			\$459,000	\$0		

IV. GOALS AND OBJECTIVES

EC Long-Term Goal and Objectives

The long-term goal of the WPCSRF is to maintain, restore and enhance the chemical, physical and biological integrity of the State’s waters for the benefit of the overall environment and the protection of public health.

Objectives:

1. Provide affordable financial assistance for eligible applicants that will address ECs.

EC Short-Term Goal and Objectives

The short-term goals of the WPCSRF are to continue to preserve and improve the quality of the state’s waters (surface and groundwater), meet the water pollution control needs of the state, and eliminate any public health hazards related to the discharge of inadequately treated wastewater or other pollutants as it relates to ECs. As an estimated measure of the environmental benefits attained through funding of water pollution control projects, the WPCSRF program will continue to enter into the EPA database the environmental benefits information for each project during SFY 2024.

Objectives:

1. Maintain and promote the WPCSRF program, which provides low interest financing (up to 100 percent loans) for water pollution control EC projects; provide financial assistance for 1 new project in SFY24 from the EC capitalization grant.
2. Ensure the technical integrity of WPCSRF projects through the review of planning documents, design plans and specifications, construction activities and development of a sound operation and maintenance program.
3. Ensure compliance with all pertinent federal, state, and local water pollution control laws and regulations.
4. Obtain optimum turnover of the funds for the State in the shortest reasonable time, fund eligible EC projects.
5. Simplify the administrative and regulatory requirements of the program, without sacrificing project quality, to make the financial assistance readily accessible; consider ways to improve the program and optimize use of EC grant resources.
6. Apply for all available appropriated federal funds, for which a need has been identified, contingent upon federal legislation.

V. INFORMATION ON THE EC ACTIVITIES TO BE SUPPORTED

As required in the BIL, financial assistance to be provided by the WPCSRF EC capitalization grant must be 100% principal forgiveness. This type of assistance can be provided to local communities, sanitary sewer districts, counties, eligible private persons, State agencies, or other sub-governmental units recognized under Montana statutes for the construction of publicly owned wastewater treatment facilities, non-point source water pollution control projects, or the purchase of equipment to protect or improve water quality as it pertains to ECs.

At least 10% of the FFY23 EC capitalization grant (\$104,300) must be used to fund green projects as defined by EPA. Projects that qualify for the Green Project Reserve are those that address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities.

The EPA BIL SRF Implementation Memo encourages state SRF programs to review, refine and improve their CWSRF affordability criteria and priority point systems to ensure that additional subsidy is provided to disadvantaged communities. Montana CWSRF assessed and revised our affordability criteria in 2022. This criterion pertains to the entire CWSRF program and all grants, including the CW EC grant.

Like the CWSRF base and supplemental grants, the EC grant allows a portion of the grant to be reserved for administrative expenses, however the State will not use any portion of the EC grant for grant administration and will instead administer the EC grant through base and supplemental grant administrative expenses.

VI. ASSURANCES AND SPECIFIC PROPOSALS

The State will ensure compliance with the FFY 2023 BIL CWSRF Emerging Contaminant Programmatic Terms and Conditions as applicable to the nature of the project being funded. The State will ensure compliance with the following sections of the law in the State/EPA Operating Agreement, of which this document is a part. In addition, the State has developed specific proposals for implementation of those assurances in the rules promulgated by the Montana Department of Environmental Quality (DEQ).

- Section 602(a) - Environmental Reviews - The State of Montana certifies that it will conduct environmental reviews of each Title II project receiving assistance from the WPCSRF. Montana will follow EPA approved, NEPA-like procedures in conjunction with such environmental reviews.
- Section 602(b) (4) - Timely Expenditures - The State of Montana certifies that it will expend all funds in the WPCSRF in an expeditious and timely manner.
- Section 602(b)(6) - Compliance with Title II Requirements - The State of Montana certifies that the applicable Title II requirements listed under this section will be satisfied in the same manner as projects constructed under Title II of the Clean Water Act.

The requirements for Clean Water SRF programs, including Montana's WPCSRF program, included in the Federal Water Resources Reform and Development Act (WRRDA) which was passed by Congress in 2014 remain in effect for both the base and supplemental FFY23 capitalization grants. A summary of the requirements and a brief description of how the WPCSRF program will address them are included below.

Cost and Effectiveness: The SRF recipient must certify that it has studied and evaluated the cost and effectiveness of the proposed project and, to the maximum extent possible, has selected the alternative that maximizes the potential for water conservation and energy efficiency. This project involves improvements to the laboratory air handling equipment that will result in better temperature control and an "unoccupied" setting will cut energy usage.

Engineering Procurement: The State must either certify that the laws required for procurement of engineering services are equivalent to the federal requirements, which stipulates a qualifications-based selection process, or adopt the federal procurement requirements (40 U.S.C. 1101). Although Montana's procurement laws are consistent or equivalent to the federal requirements in most respects, DEQ's legal counsel felt that the differences between the state and federal laws were significant enough that the certification of equivalence could not be made. Therefore, the WPCSRF program will use the federal procurement requirements for architect and engineer procurement rather than try to change the state law.

Fiscal Sustainability Plans: A loan recipient must certify that it has developed and implemented a fiscal sustainability plan that includes: an inventory of critical assets; an evaluation of the condition and performance of the assets; evaluation and

implementation of water and energy conservation efforts; and a plan for maintaining, repairing and replacement of treatment works. Some states, including Montana, do not give direct loans to communities. Rather, they buy the bonds that are issued by communities. The wording in the WRRDA pertaining to this requirement specifically refers to loans and, therefore, unless and until the wording in the law is modified, EPA has indicated that this requirement does not apply to Montana's WPCSRF program.

Disadvantaged Communities/Affordability: A key priority of the bipartisan infrastructure law (BIL) is to ensure that small (population < 10,000) or disadvantaged communities benefit equitably from this investment in water infrastructure. Disadvantaged communities can include low-income people, communities of color, or areas that experience, or are at risk of experiencing, disproportionately high exposure to pollutants.

Build America/Buy America (BABA) Requirements: Effective May 14, 2022, all WPCSRF projects funded fully or in part with base or supplemental capitalization grant funds must comply with the Build America, Buy America Act. This Act requires that all the iron, steel, manufactured products, and construction materials used in the project must be produced in the United States.

For iron and steel products and construction materials that are permanently incorporated in the project, all manufacturing processes, from the initial melting state through the application of coatings must occur in the United States. This includes products made primarily of iron or steel such as lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, and reinforced precast concrete and construction materials made primarily of iron or steel such as wire, cables, rebar, framing, joists, decking, grating, railings, stairs, and fencing.

The term "manufactured product" means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product. This includes (but is not limited to) pumps, motors, drives, mixers, motorized screens, controls and switches, membrane bioreactor systems, membrane filtration systems, clarifiers, disinfection systems, HVAC systems, and skids that contain multiple components.

For construction materials, all manufacturing processes for the construction material occurred in the United States. This includes an article, material, or supply that is or consists primarily of non-ferrous metals (construction materials made of ferrous metals are covered under iron and steel), plastic- and polymer-based products including PVC, composite building materials, and polymers used in fiber optic cables, glass including optic glass, lumber, and drywall.

Specification inserts and certification forms have been developed by the WPCSRF program and will be used to help communities meet this requirement.

Federal Davis Bacon wages and Disadvantaged Business Enterprises: These requirements have been in place for some time and will continue to be a requirement. Davis Bacon requirements apply to all SRF-funded projects and DBE requirements apply to only those projects funded with federal WPCSRF funds including the EC grant funds.

Additional Subsidization: As mandated in the BIL, the total amount of AS (i.e., principal forgiveness) that the CWSRF must allocate for the FFY 23 EC capitalization grant is fixed at 100%.

Other CWSRF programmatic requirements that will be applicable, depending on procurement of these services, include Single Audit, Signage, and Telecomm Equipment and Services Prohibition. These requirements will be listed in the Memorandum of Agreement that will be signed by both agencies.

The CWSRF program agrees to input data for the EC project, as required by EPA, into the FFATA and the SRF Federal Database systems and agrees to comply with all requests for data related to the use of the funds under Title VI of the CWA, and to report all uses of the funds no less than quarterly.

VII. ANTICIPATED FUNDING LIST/PROJECT PRIORITY LIST

Table 2 contains the project that the WPCSRF program anticipates will be funded with the FFY 2023 EC grant for SFY 2024. Based on the stipulations provided in the BIL, principal forgiveness will be applied to all projects funded by the EC grant. With only one project that utilizes all the available CWSRF EC funds, the funding list in Table 2 also serves as the SFY24 EC Project Priority List.

Table 2. WPCSRF Projects Anticipated to Receive FFY 2023 EC Grant Funding for SFY 2024

Project	Project Information	SRF Cost
Montana Department of Public Health and Human Services Laboratory (Helena, MT)	ECs addressed: PFAS*; metals**; volatile organic compounds***, and chlorates. Project: Purchase several instruments to analyze EC in wastewater and surface water samples. Upgrade air handling equipment with new control valves to maintain proper temperature to test sampling in accordance with approved EPA methods.	\$1,043,000
TOTAL		\$1,043,000

* Instrument to be purchased can run EPA Method 1633 for wastewater/ surface water.

** Cobalt, Lithium, Molybdenum, Tungsten, and Vanadium

*** 1,4-Dioxane, 1,3-dichloropropane, 1,1,1,2-Tetrachloroethane, 1,1-Dichloroethane, and Chloromethane

As previously stated at least 10% of the FFY23 EC capitalization grant (\$104,300) must be used to fund green projects. The proposed project will install new control valves to the air handling equipment of the laboratory to maintain proper air temperature to meet the requirements of various EPA EC testing methods. The installation of new valves will result in energy savings for the laboratory as the operating efficiency of the system will increase. While quantifying the energy savings from the improvement is difficult, with the new air handling equipment, staff will

be able to implement a laboratory “unoccupied” sequence that is estimated to reduce energy by more than 30%. The new equipment will also control with greater airside precision and much better temperature control. The estimated cost associated with the air handling equipment is \$126,000 which exceeds the 10% GPR requirement.

A key priority of the bipartisan infrastructure law (BIL) is to ensure that small (population < 10,000) or disadvantaged communities benefit equitably from this investment in water infrastructure. The State lab, where these improvements will take place, provides services to communities across Montana therefore, the proposed project will benefit all citizens of Montana, including those located in rural, small, and disadvantaged communities.

The method of procuring this equipment for the Montana Department of Public Health and Human Services will be handled through a Memorandum of Agreement (MOA) between the Montana Department of Environmental Quality and the Montana Department of Public Health and Human Services.

VIII. EC GRANT FINANCIAL STATUS

Unlike the base and supplemental capitalization grants, the BIL waives the requirement of Title VI of the Clean Water Act to provide a State match for the CWSRF Emerging Contaminants capitalization grant. As such, states are not required to match the federal funds with state funds and the total funds available to Montana for EC projects and associated activities is solely based on the amount of the FFY 2023 EC grant which is \$1,043,000. In addition, the BIL stipulates that 100% of the EC grant funds be provided as principal forgiveness or grants. Montana will provide the funds as principal forgiveness. **Attachment 1** shows the funding status for the EC grant.

IX. PUBLIC COMMENT, AND AMENDING IUP

Public Review and Comment – One public hearing was held on November 28, 2023, in Helena to allow public comment on the draft IUP. Public notice concerning the IUP was posted in major newspapers across the state, and the notice and draft IUP was published on DEQ’s website. There was a 30-day public comment period for the public to review and comment on the draft IUP. That comment period ended December 12, 2023.

Amending the IUP - A simple addition to the IUP will be allowed after notification has been provided to affected projects (if any) already on the list. If a project scheduled to receive loan assistance within the year is displaced by the addition of a new project, a formal public hearing, if requested, will be held to allow comment on the modifications to the IUP.

ATTACHMENT I

**PROGRAM FUNDING STATUS
MONTANA WPCSRF EMERGING CONTAMINANTS**

STATE FISCAL YEAR 2023

Capitalization Grants	\$ 459,000
State Match.....	\$ N/A
Program Administration Expenses.....	\$ (0)
Available for Principal Forgiveness (PF).....	\$459,000
Transfers to DWSRF (direct capitalization grants)	\$ (459,000)
Transfers from DWSRF (direct capitalization grants)	\$ N/A
Total Funds Available for PF through August 2023.....	\$ 0

STATE FISCAL YEAR 2024

Capitalization Grant (FFY23)	\$ 1,043,000
DWSRF Transfer.....	\$ 0
Program Administration Allowance.....	\$ (0)
Available for PF SFY24.....	\$ <u>1,043,000</u>

Total Funds Dedicated for PF.....	\$ 1,043,000
PF provided as of August 2023	\$ (0)
Funds available for PF in SFY24.....	\$ 1,043,000
Amount of estimated PF identified on Table 2 of Fiscal Year 2024 Intended Use Plan	\$ 1,043,000