



State of Utah

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March 29, 2024

Barratt Nielsen, Board Chair
Big Plains Water Special Service District
1777 N. Meadowlark Ln.
Apple Valley, Utah 84737
ssdchairman@applevalleyut.gov

Subject: **Federal SRF Loan Authorization and Procedures for Committal of Funds; Big Plains Water Special Service District, System #27069, Loan #3F2032**

Dear Barratt Nielsen:

On February 29, 2024, the Drinking Water Board (hereinafter called the "Board") authorized a construction loan of \$3,370,000 with \$3,370,000 in principal forgiveness to Big Plains Water Special Service District (hereinafter called the "Recipient") for the construction of a 4.5-mile transmission line to connect Apple Valley Water System with the Cedar Point Water System to resolve a source capacity issue in the Cedar Point System (hereinafter called the "Project").

The authorized financial assistance amount will be incrementally deposited into the escrow account mentioned in item 1 after all requirements outlined in this letter are complete and the principal forgiveness agreement has been signed and fully executed.

This financial assistance was approved subject to the availability of funds. The assistance represented by this authorization will be funded, in whole or in part, from the proceeds of a federal SRF Capitalization Grant (Section 1452 SDWA) to the State of Utah. Under the SRF Capitalization Grant Program, federal funds are to be made available to the State by way of authorized draws on a letter of credit over the construction period of the Project. Therefore, this authorization is expressly subject to the continued availability of federal funds through the SRF Capitalization Grant, and the letter of credit related thereto.

Neither the Board nor the State of Utah shall be bound by this authorization or by any obligation to provide further funds to the Recipient if the SRF Capitalization Grant funds to which this

authorization relates are not awarded or if payments under the letter of credit are withheld for any reason.

As Recipient of project funding, you will need to complete the following items before the Board will disburse funds:

1. Consistent with requirements of the law and the covenants of applicable loan documents, the actual payment of funds by the Board to the Recipient will not take place until the Board has assurance the funds will be used for Project costs and the Project will actually be completed. To assure this, all monies to be expended on the Project, including the Recipient's share shall be placed in an escrow account supervised by the Recipient and the Board. The Recipient will need to select an escrow company and submit a copy of the proposed escrow agreement to the Board for review. In general, the Board will make incremental advances into the account on a monthly or quarterly basis.

Disbursements from the escrow account will be reviewed and approved by the Division of Drinking Water. A Disbursement Request Form must be completed and submitted along with each request. **Disbursement amounts must be authorized in writing by the Recipient and the State prior to any funds being released from the escrow account.** Please refer to the reimbursement instruction sheet.

2. The Recipient's contract with its project engineer shall include the cost of developing the plans and specifications and the construction inspection of the Project. The contract must be submitted to the Division of Drinking Water for review. (This requirement is to assure the Board that adequate and appropriate arrangements are made for completing and inspecting the project within the guidelines set by the Board.)
3. **The project engineer shall submit, in accordance with R309-500, plans and specifications, bidding documents, and general conditions to the Division of Drinking Water for review and Plan Approval prior to soliciting bids on the Project** The engineer shall submit project documents via ddwpnf@utah.gov per <https://deq.utah.gov/drinking-water/general-plan-approval-process> for the expeditious assignment and review of the plans and specifications. Any changes to approved plans and specifications prior to finalizing the Principal Forgiveness Agreement must be reviewed and approved by the Division of Drinking Water. These funds cannot be disbursed until after the bid opening *has occurred and a copy of the bid tabulation has been reviewed by the Division* to assure that sufficient funds are authorized to complete the Project. If substantial changes in the Project are required, they must be considered by the Board for committal of additional funds. The following shall be included in the specifications:
 - a. The Recipient shall require contractors hired to perform work on their project to pay prevailing wage rates according to Davis-Bacon labor wage requirements. See attached Reference Page for document location.

- b. The Recipient shall comply with the Build America Buy America Act requirements. See attached Reference Page for document location.
4. Rights-of-way and easements for construction, and operation and maintenance of the Project shall be acquired. The Recipient, through the Engineer, shall furnish its attorney a right-of-way map showing the location of all sources, buildings, structures, pipelines, and other pertinent facilities not only in the Project but also for the entire water system. The Recipient's engineer and presiding officer will sign this map and provide a copy to the Recipient's attorney as a basis for the certification described below.
5. The Recipient's attorney shall certify the following items in writing to the Board:
 - a. The Recipient is a legal entity.
 - b. The Recipient has valid legal title to the rights-of-way designated and shown on the right-of-way map, including rights-of-way both for the project to be constructed and the remainder of the existing water system.
 - c. The Recipient has established the ownership of water rights to any and all water used in the system and such rights are summarized with associated water right numbers.
 - d. The bidding process and contract documents for the construction of the Project have the proper and legal format and are in compliance with the Utah Code Annotated (including, but not limited to Title 34, Chapter 30).
 - e. After the completed and executed construction contract, along with the performance and payment bonds and evidence of necessary insurance, has been reviewed by the Recipient's attorney, the Recipient's attorney shall furnish to the Drinking Water Board his legal opinion that all of such items are legal and binding and in compliance with the Utah Code.
6. As a condition of this loan, the Board will require the Recipient to complete a Water Conservation Plan. If your system has less than 500 connections, the plan must be submitted to the Division of Drinking Water for approval. If your system has more than 500 connections, the plan must be submitted to the Division of Water Resources for review and approval, and the approved plan must be adopted (completing the *Certification of Adoption*). If the Recipient has already adopted such a plan, that plan and its certification of adoption may be submitted to the Division of Drinking Water for verification.
7. There are Federal laws, executive orders and government-wide policies that apply to projects receiving Federal financial assistance. These "cross-cutting Federal authorities" include the following:

Environmental Authorities:

- Archaeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Flood Plain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Historic Preservation Act of 1966, Pub. L. 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Economic and Miscellaneous Authorities:

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended, Executive Order 12372
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grant, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549

Social Policy Authorities:

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-352
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138, and 12432
- Section 129, of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L.100-590

8. In compliance with Utah Code Annotated 9-8-404 and 36 CFR 800.3(g), the project engineer shall submit a report to the Division of Drinking Water that demonstrates a reasonable and good faith effort was made to identify and gather information to determine if cultural resources are present in the area of potential effects, including a Class III Survey. The report format shall meet SHPO State of Utah Archaeological Compliance Guidance. Cultural resource reporting guidance is outlined in the Utah SHPO Short Cultural Resources Inventory Report Form. See attached Reference Page for document location.

9. The Recipient must agree to comply with the above Federal laws, executive orders, and government-wide policies that apply to the Project, complete the following, and submit said documents to the Division, as specified below:
- a. Ensure, to the fullest extent possible, that Disadvantaged Business Enterprise procurement requirements are achieved in all procurements for prime contractors, subcontractors, suppliers, and others. See attached Reference Page for document location. For your information, refer to these forms for DBE utilization:

DBE Contact Log for Bidders
Subcontractor Participation, Performance, and Utilization forms
Suggested Sources for Locating Certified MBE/WBE Contractors in Utah

Ensure that the “six affirmative steps” are taken to assure compliance with the State’s “fair share goals” in all procurements. The Division will specify the required language, documents, and instructions.

- 1) Bid solicitations shall state that this is a federally funded project requiring compliance with the State’s “fair share goals” and federal EEO regulations. See attached Reference Page for document location.
 - 2) The “Special Conditions” or “Supplemental Conditions” in the bid documents shall contain the language and instructions specifying the MBE and WBE procurement requirements, provided by the Division.
 - 3) The same bid documents shall also contain the federal EEO requirements.
- b. Report MBE/WBE utilization for construction services on “EPA Form 5700-52A.” See attached Reference Page for document location. This is a requirement for projects that exceed the Simplified Acquisition Threshold set by the Office of Management and Budget. Annual reports are due by October 30 of each year.
13. The Recipient shall submit a cash drawdown schedule prepared and certified by their consulting engineer to be a schedule that coincides with the rate at which expected construction related costs are incurred for that project.
14. The Recipient must get a Unique Entity ID from SAM.gov. Once the entity record has been validated, submit a copy of the Unique Entity ID to the Division of Drinking Water.
15. The Recipient shall comply with the Single Audit Act requirements in accordance with OMB Circular A-133.
16. The Recipient is required to comply with the Signage Requirements outlined in the Bipartisan Infrastructure Law. See attached Reference Page for document location.

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17. In compliance with Utah Code Annotated 73-10g-402, water systems applying for federal financial assistance for improvements to capital assets related to water infrastructure shall commit to adopt a capital asset management plan. The Asset Management Plan shall be submitted to the Division for review and approval prior to loan closing, unless preparing an Asset Management Plan is included as part of the project for which the Recipient has applied for financial assistance. In which case, the Asset Management Plan shall be submitted to the Division as soon as it is completed or prior to the entity submitting its final project reimbursement request.

To facilitate the timely completion of the financial assistance requirements outlined in this letter, the Recipient and its attorney and engineer shall submit to the Division of Drinking Water all the items listed above prior to seeking committal of funds from the Board and no later than 30 days before fund disbursement. As much as possible, this information shall apply to the Project in general to allow a single review.

These requirements must be completed on or before March 1, 2024. If the Recipient fails to reasonably comply with the Project schedule, the Authorization may be withdrawn in accordance with R309-705-7.

These requirements may not cover all the matters pertaining to the Project. We anticipate that specific questions relating to your Project will arise, and we are confident that a cooperative effort can resolve any issues.

If you have any questions concerning these requirements, please contact me at (801) 674-2563.

Sincerely,

DRINKING WATER BOARD



Michael J. Grange, P.E.
Assistant Executive Secretary

MJG/lr

Enclosure

1. Reference Page
2. Principal Forgiveness Agreement

cc: William Prater, Esq., William L. Prater, LLC, P.O. Box 71368, SLC, UT 84171, bill@billprater.com
Jenna Vizcardo, Big Plains WSSD, clerk@applevalleyut.gov
Nathan Wallentine, Sunrise Engineering, nwallentine@sunrise-eng.com
Paul Wright, DEQ District Engineer, pwright@utah.gov
DDW Finance

Reference Page

- *Davis-Bacon labor wage requirements - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000538.pdf>.
- *American Iron and Steel Provision - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000536.pdf>
- *Build America Buy America Act - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-004136.pdf>
- *Utah SHPO Short Cultural Resources Inventory Report form - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2020-038201.pdf#page=53>
- *Disadvantaged Business Enterprise procurement requirements - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000522.pdf>
- *DBE Contact Log for Bidders - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000526.pdf>
- *Subcontractor Participation, Performance, and Utilization forms - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000526.pdf>
- *Suggested Sources for Locating Certified MBE/WBE Contractors in Utah - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000532.pdf>
- *Federal EEO regulations - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000530.pdf>
- *" EPA Form 5700-52A" - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000524.pdf>
- *Federal Project Signage Requirements - <https://documents.deq.utah.gov/drinking-water/financial-assistance/Federal%20SRF/DDW-2022-000520.pdf>