



# NEW HAMPSHIRE DRINKING WATER & GROUNDWATER TRUST FUND

*“to provide for the protection,  
preservation, and  
enhancement of the drinking  
water and groundwater  
resources of the state”*



**Drinking Water and Groundwater Advisory  
Commission Meeting  
May 15, 2023**



# NEW HAMPSHIRE DRINKING WATER & GROUNDWATER TRUST FUND

## Drinking Water and Groundwater Advisory Commission Meeting May 15, 2023



### DWGTF Advisory Commission Meeting

May 15, 2023 at 10am, Room 111-114

NHDES Office, 29 Hazen Drive, Concord NH

#### AGENDA ITEM

##### OPENING REMARKS

Welcome

Vote to accept meeting minutes

*Chair Bill Boyd*

Public comment on agenda items only

*Public*

##### PROGRAM UPDATES

Source Water Protection Program

Program history and recommendations to increase program participation

Rule Change: Include high-yield stratified drift aquifers as eligible land to increase protections of these important areas- Vote

Rule Change: Expand area eligible for funding to entire property and simplify the match requirement- Vote

*Cheryl Bondi, NHDES Drinking Water and  
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Modify the SWP program rules to include permanent protection of the property through a modified grant agreement included with the warranty deed- Vote

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Drinking Water Infrastructure Funding Update

Overview of new federal money and programs-informational only

*Brandon Kernen, NHDES Drinking Water  
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##### OTHER BUSINESS

Drinking Water Construction Project Assistance Subcommittee meeting

Review of funding criteria and priorities for 2023- informational only

*Marco Philippon, CPA Subcommittee Chair*

##### CONCLUDE

Public  
Comment on  
today's  
agenda items

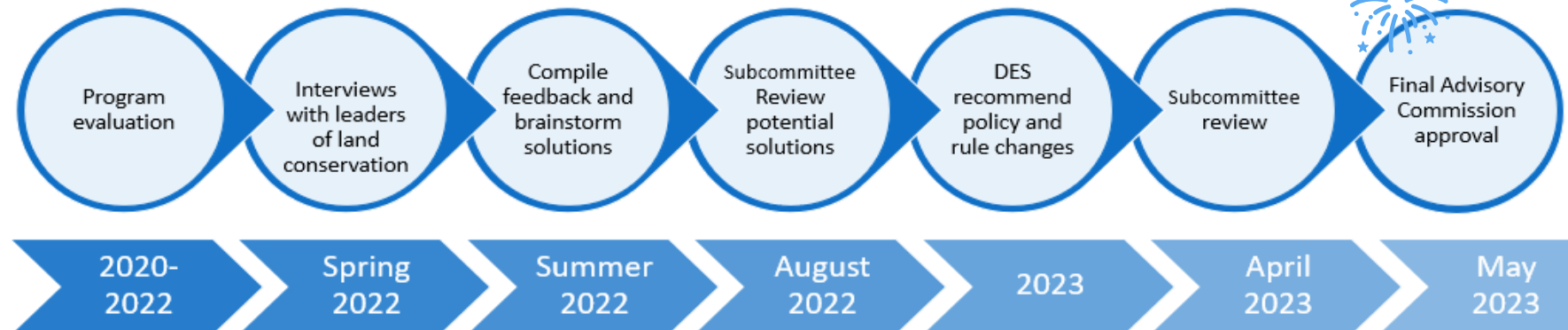


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# Program History and Looking Ahead

- \$7.1 M awarded in grants
- 40 projects supported
- 6,500 acres of source water lands protected
- Program participation is low
- In 2021 DES and Subcommittee conducted program evaluation
- Developed strategies to **increase participation and competitiveness**
- Bring high-quality source water projects to the Commission



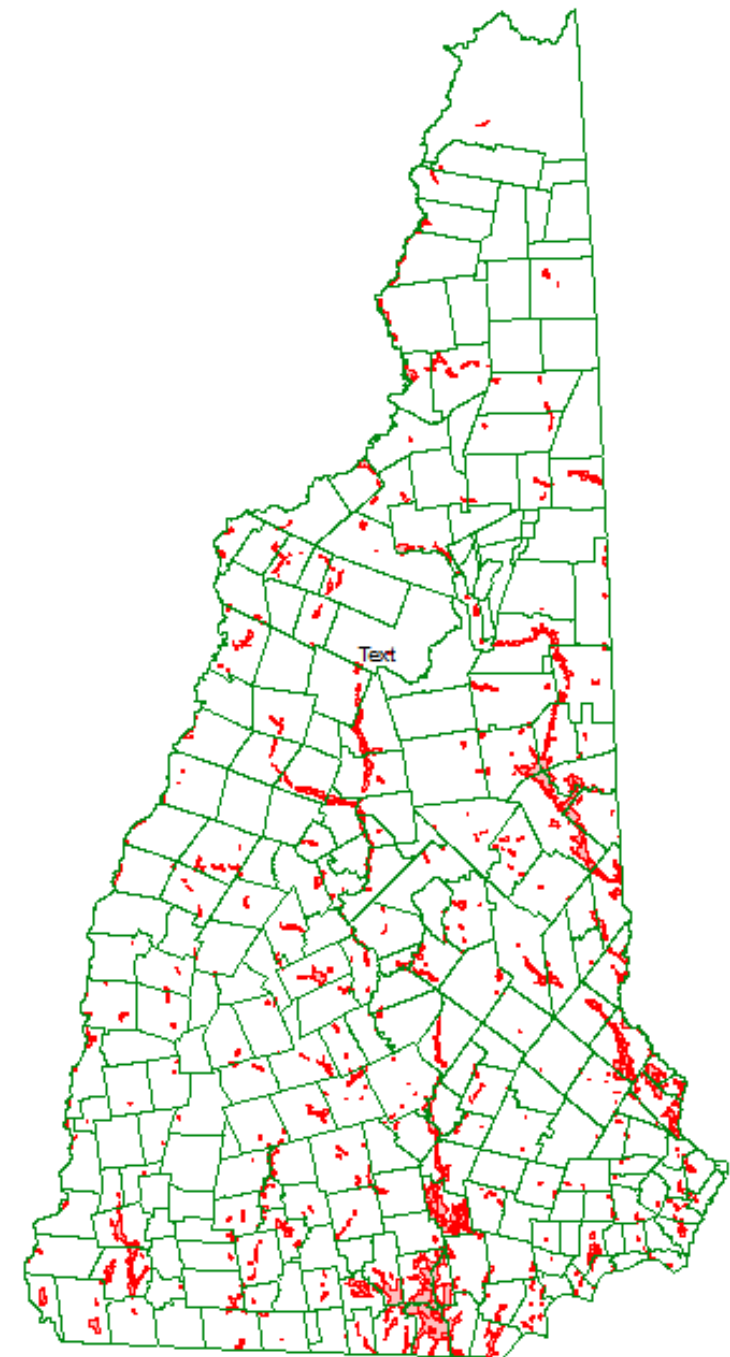
# Program Evaluation and Stakeholder Engagement

- Stakeholders have consistently expressed to NHDES difficulty in securing full funding for land conservation
- Strict eligibility requirements limit projects and it is difficult to align those with other funding programs
- SWP contributes to only a portion of total project cost
- Trust Fund needs other funders to provide match but it is difficult to find projects
- Results in losing projects that would contribute to source water



## RECOMMENDATION #1 | Include high-yield stratified drift eligible land to increase protections of these important ar

- GA2- Aquifers identified as highly productive for potential use as a public water supply
- Only 20% are protected and there is no required management and protections
- These areas are being lost to land development
- Local groups lack the funding to protect these important areas
- Extending eligibility to include GA2 aquifers would support local groundwater protection efforts and align with the DWGTF mission to protect source water.



*Distribution of GA2 high-yield aquifers 6*

# RECOMMENDATION #1 | Include high-yield stratified drift aquifers as eligible land to increase protections of these important areas

“Eligible Land” means:

(a) land identified in the most recent release of the Geographical Information System (GIS) dataset created by the Department entitled “high-priority water supply lands” and available from the Department provided that the land lies within either a Wellhead Protection Area (WHPA)<sup>2</sup>for an active well used by a community or non-transient, non-community public water system or a Hydrologic Area of Concern (HAC) delineated by the Department within active water supply watersheds used by community public water systems ***or land encompassing a high-yield stratified drift aquifer classified under RSA***

***(b) 485-C:5 as Class GA2.***

<sup>2</sup>If an applicant believes that an area outside of an existing WHPA may benefit a water source for a community or non-transient, non-community public water system, the applicant is encouraged to seek modification or creation of a WHPA. ***WHPA includes, but is not limited to, areas contributing surface or groundwater to public water supply wells as defined under RSA 485:1-a, XVIII.***

# RECOMMENDATION #2 | Expand area eligible for funding to entire property and simplify the match requirement

## Definitions

~~“Eligible Project Cost” means total project cost times the percentage of the total project acreage that consists of eligible land.~~

~~“Total Project Cost” means the **combined costs of all activities associated with the eligible conservation project.** equivalent of the eligible water supply land protection costs defined by RSA 486-A:2,III-a and other project-related costs as approved by the Commission.~~

## Match requirement

***At least 50% of the project cost must be provided by matching funds.*** No grant shall be more than 50% of the eligible project cost (1:1 match).



# Land Protection for Fee-Simple Acquisition

## 3 ways source water lands can be protected

- 1. Conservation easement:** Landowner and a land trust enter a legal agreement to permanently limit the use the property to protect conservation values. Landowner retains ownership of the land, can sell their land in the future or pass it on, but the conservation restrictions remain forever
- 2. Warranty deed with conservation restrictions:** Terms are attached to the warranty deed that restricts certain land use and activities
- 3. Fee Simple Ownership (by a Conservation Entity/Town):** Landowner owns and holds all the rights to the property.
  - Often difficult to find a second party to take on the enforcement responsibilities and hold legally binding conservation restrictions
  - If the landowner is willing and qualified (e.g., land trusts) to uphold the conservation restrictions, an alternative mechanism is needed

To protect land there needs to be two parties involved:

1. Owns the property
2. Holds and enforces the conservation restrictions



**EXAMPLE: City of Portsmouth and the Chick Property**

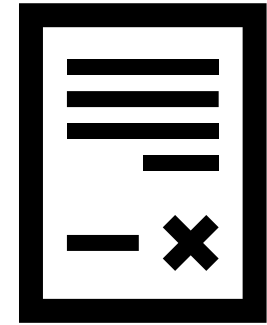
# Land Protection for Fee-Simple Acquisition

## Proposed Solution from NH Attorney General's Office

- Alternative grant agreement when Trust Fund grant is used to purchase property in fee-simple acquisitions where there is no third party CE or holder of Conservation Restrictions.
- Grant recipient would be bound to protect the property under the grant agreement
- During a transfer of ownership the landowner would be obligated to place perpetual conservation restrictions at that time, along with a Third Party Right of Enforcement to NHDES

### Handouts:

Grant agreement exhibits  
Warranty Deed language



## RECOMMENDATION # 3 | Modify the SWP program rules to include permanent protection of the property through a modified grant agreement included with the warranty deed

- ***The project must permanently protect the property in accordance with subparagraph (a) below unless the applicant demonstrates that such protection is impracticable in which case the property must be permanently protected in accordance with subparagraph (b). Subparagraph (c) may only be used if the applicant demonstrates that both subparagraphs (a) and (b) are impracticable and in accordance with such other terms and conditions as the Commission may require.***
- (a) A conservation easement to be held by a municipality, state agency, federal agency or not-for-profit land trust or conservation organization that has adopted Land Trust Alliance Standards and Practices. All easements not held by a state agency must include a third-party right of enforcement in favor of the State of New Hampshire.
- (b) A deed restriction with third-party right of enforcement in favor of the State of New Hampshire or other appropriate State agency.
- ***(c) A grant agreement recorded in the registry of deeds that requires the recipient to execute a conservation easement or deed restriction as described in (a) or (b) above when the recipient transfers fee interest in the eligible land to another party.***



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# Drinking Water Funding FY21-FY26

Traditional DWSRF Funding – EPA & Repayment \$15-20M  
Drinking Water & Groundwater Trust Fund \$20M

## **New Funding**

ARPA **\$60M** (one time funding/now mostly committed)

PFAS ARPA **\$25M**

PFAS Remediation Loan Fund **\$60M**

22-26 DWSRF Emerging Contaminant **\$40M**

22-26 Lead Service Line SRF **\$140M**

22-26 Supplemental SRF **\$112M**

22-26 BIL Small/Disadvantaged Water Systems Emerging Contaminant **\$50M**

WIIN Lead & Disadvantaged **\$3M**



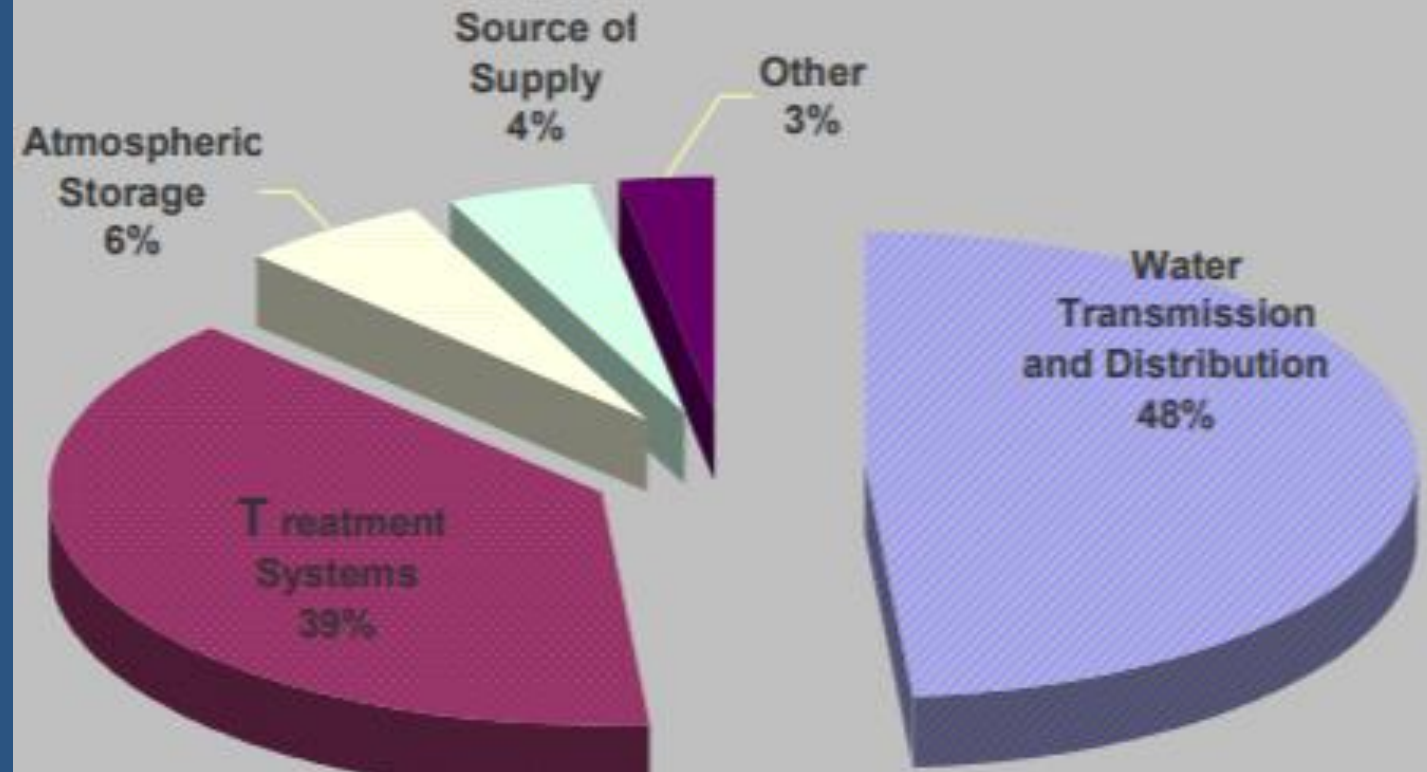
**\$555M**  
additional  
funds from  
FY21-26



# Aging Infrastructure - Challenge

- Prior to adopting new standards for PFAS, Mn and arsenic
- Prior to the lead and copper rule
- Does not consider climate change impacts
- Does not include all other infrastructure issues

**Figure ES-3: Apportionment of \$1713 M 20-Year Funding Need by Infrastructure Type**



# WIIN Funding

## *Water Infrastructure Improvements for the Nation Act*

**\$52M**

WIIN Program	\$
Lead in Schools & Daycares	\$2,171,000
Small Underserved Disadvantaged Communities	\$783,000 (\$343,636) DWGTF state match
Emerging Contaminants	\$18,914,000 (22&23) \$30,000,000 (24-26 <i>estimated</i> )

# 2023 DWSRF Funding

**\$62M**

**Base**  
\$4.9

26-36% Subsidy  
for  
Disadvantaged

**Supplemental**  
\$21M

49% Subsidy for  
Disadvantaged

**Lead**  
\$28.6M

49% Subsidy for  
Disadvantaged

**Emerging  
Contaminants**  
\$7.6M

100% Subsidy 25%  
for Disadvantaged



# Drinking Water Funding Programs Other than DWGTF

Program	Total Amount	Funding Type	Criteria
<b>Base/Regular SRF (Federal/ongoing)</b>	\$10M-\$15M/year Ongoing	Loan forgiveness is typically 10-40%	<ul style="list-style-type: none"> <li>• Capital improvements for drinking water infrastructure (design and construction)</li> <li>• Community (publicly &amp; privately owned) and non-profit, non-transient water systems</li> <li>• Community (publicly &amp; privately owned) and non-profit, non-transient water systems</li> <li>• Address contaminants on USEPA's Candidate Contaminant List (primarily PFAS &amp; manganese in NH)</li> <li>• Community (publicly &amp; privately owned) and non-profit, non-transient water systems</li> <li>• Replace entire lead service line (private and public)</li> </ul>
<b>Supplemental SRF (Federal/Temp.)</b>	\$20M-\$26M/year FY22/23/24/25/26	49% loan forgiveness	
<b>Emerging Contaminant SRF (Federal/Temp.)</b>	\$8M/year FY22/23/24/25/26	100% loan forgiveness	
<b>Lead Service Line SRF (Federal/Temp.)</b>	\$28.35M/year FY22/23/24/25/26	49% Loan forgiveness	
<b>Emerging Contaminant Small/Disadvantaged Water System Grant Program (Federal/Temp.)</b>	\$18.9M FY22/23 \$9-\$10M/year FY24/25/26	100% grant	<ul style="list-style-type: none"> <li>• Small or Disadvantaged Water System Grant Program</li> <li>• Address contaminants on USEPA's Candidate Contaminant List (primarily PFAS &amp; manganese in NH)</li> </ul>
<b>PFAS Grant &amp; Remediation Loan Fund (State)</b>	\$50M Loan Funds \$35M Grant [Additional funding possible pending ongoing legislation]	<b>Grants</b> -\$1.5M or 30% of total project costs  <b>Low Interest Loans</b> 10% Forgiveness for Disadvant Com.  50 % Contingent Reimbursement	<ul style="list-style-type: none"> <li>• Water Systems/Municipalities (to assist private wells)</li> <li>• Exceedance of a PFAS AGQS/MCL, not a violation</li> <li>• Costs incurred after September 30, 2019</li> </ul>





# Noteworthy Points

- Funding for Base and Supplemental SRF includes a required 10%-20% state match
- A minor portion of the funds for several of the programs are used to administer drinking water programs, grants and technical assistant contracts
- There are very complex conditions for using most of the federal funds
  - American Iron and Steel requirements
  - Build America Buy America requirements
  - Davis Bacon Wage Rate requirements
- Loan forgiveness amounts listed in the table are not one size fits all. Some water systems could receive 0% forgiveness and others 100% (or somewhere in between) as long as NHDES meets the forgiveness requirements for the entire program
- 600% increase in annual funding affects numerous areas of NHDES
  - Administering increase funding programs and standing up new programs
  - Contracting
  - Engineering reviews
  - Project management
  - Disbursement payments
  - Loan tracking
  - Tracking a blend of funding sources is very complex
  - NHDES is routinely audited by USEPA. Audits are about to get a lot more aggressive and be conducted by the Office of the Inspector General.





# Base State Revolving Fund

- Is the core funding for infrastructure loans, grants and contracts and funds the drinking water program staff.
- Congress has recently begun funding specific drinking water and groundwater infrastructure projects directly with earmarks (CDS).
  - Reduces the states' SRF allocation.
- Funding for DWGB programs at NHDES is OK for now with the temporary funding for the next 3-4 years.
- If earmarks continue and are paid for by cutting the Base SRF when the temporary funding ends, drinking water programs nationally will have significant funding issues for water systems and staff.
- Earmarks reduce SRF infrastructure funding and bypass objective ranking criteria that have been administered by states historically.
- This issue is being discussed with our Congressional delegation and nationally through drinking water and wastewater trade associations.





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Construction  
Project  
Assistance  
Subcommittee  
Meeting to  
continue



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**Thank You**

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