



# New Hampshire Drinking Water and Groundwater Advisory Commission

## Source Water Protection Grant Program NH Drinking Water and Groundwater Trust Fund

### Rules for Source Water Protection Grants Adopted May 9, 2022 Revised May 15, 2023

#### **Applicability**<sup>1</sup>

These rules apply to applications to the Drinking Water and Groundwater Trust Fund (“DWGTF”) for grants related to source water protection. All other funding provided by the Commission shall be in accordance with RSA ch. 485-F and other Commission or State rules as applicable.

#### **Purpose**

The purpose of the source water protection grant program is to protect existing public water supply sources, prepare for growth and development of new water supply infrastructure, and preserve natural infrastructure that will provide existing and future New Hampshire water users with safe, reliable supplies of water.

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<sup>1</sup> These rules are not intended to apply to or otherwise limit the statutory duties of the Department set forth in RSA 485-F which include but are not limited to: (a) Investigating, managing, and remediating contaminated groundwater; (b) Assisting local and regional entities in the development and administration of local wellhead protection programs, including delineation of wellhead protection areas and the inventory and management of activities which have a potential effect on groundwater quality; (c) Maintaining a statewide map identifying the classes of groundwater; (d) Measuring levels of contamination statewide and generating maps to show the areas of greatest contamination; (e) Maintaining an inventory of wells serving public water supply systems, and to the extent practicable other wells; and (f) establishing a priority list for delineation of systems that are currently contaminated with MTBE. Processing of loans and grants shall be made in accordance with the Department’s existing Drinking Water State Revolving Loan Fund rules to the extent possible until superseded by rules specific to the DWGTF.

## Definitions

**“Applicant”** means an entity that files an eligibility application, a funding application, final closing package, or any combination, for a source water protection grant from the DWGTF for a project.

**“Commission”** means the N.H. Drinking Water and Groundwater Advisory Commission.

**“Community water system”** means “community water system” as defined in RSA 485:1-a, I; specifically, a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

**“Department”** means the New Hampshire Department of Environmental Services.

**“Eligible applicant”** means:

- (a) A State agency, board, or commission or any political subdivision of the State;
- (b) Any person or legal entity, such as a sole proprietorship, partnership, corporation, association, or non-profit organization, that owns a community water system or water distribution system;
- (c) A non-profit organization that owns a non-transient, non-community water system;
- (d) A land trust or other non-profit organization that has among its purposes the conservation of land; or,
- (e) Other entities approved by the Commission consistent with RSA 485-F.

Any eligible applicant may submit an application jointly with any other eligible applicant as co-applicants.

**“Non-transient non-community water system (NTNC)”** means “non-transient non-community water system” as defined in RSA 485:1-a,XI; specifically, a non-community water system which serves the same 25 people, or more, over 6 months per year.

**“Eligibility Application”** means an application submitted in the form and manner described by the Commission, the purpose of which is to determine the eligibility of the project and applicant.

**“Eligible Conservation Project”** means a project that will protect Eligible Land.

**“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 485-C:5 as Class GA2.

or,

- (b) land that the Commission or a subcommittee of the Commission determines is likely to benefit a future water supply source of a community or non-transient, non-community public water system.

**“Final Closing Package”** means the package of documents comprising of the Final Application required by Env-Dw 1303.02, the applicable items required by Env-Dw 1303.09, and the applicable items required by Env-Dw 1304.07 after the Commission selects a project for funding and the Department enters into a Grant Agreement with the applicant. The purpose of the package is to provide all information required by the Commission rules, related Department rules, or reasonably requested by the Department to disburse the grant.

**“Funding Application”** means an application submitted in the form and manner described by the Commission, the purpose of which is to provide information to the Commission for project selection.

**“Project Cost”** means the combined costs of all activities associated with the eligible conservation project and other project-related costs as approved by the Commission.

**“Recipient”** means an applicant that receives financial assistance from the DWGTF.

### **General**

Funding shall only be provided to eligible applicants for eligible projects. The Commission may grant or deny funding in its discretion consistent with the rules set forth herein. At this time, only grants are available for eligible water supply land protection projects.

### **Conditions**

1. The property to be protected must be free of contamination and potential sources of contamination or must be restored to such a condition as a condition of the grant. Contamination includes but is not limited to any exceedance of ambient groundwater quality standards (AGQs) adopted by the Department unless naturally occurring, and may include any instance in which the Commission determines that an AGQS is likely to be violated in the future based on the presence of nearby contamination.

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<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.

2. The property to be protected must be undeveloped or must be restored to an undeveloped condition as part of the project.
3. The property to be protected must not already be permanently protected.
4. 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.
5. If the property does not provide protection of an existing active source for an active community or non-transient, non-community public water supply source, either the conservation easement or the deed restriction must ensure that the property may be used to site a public water supply source in the future.
6. For property (e.g. agricultural land) not in a natural state and whose eligibility is predicated on the protection of a surface water source, a vegetated buffer shall be established and maintained. The Department will make recommendations regarding the size and condition of the vegetated buffer required by the Commission on a site-specific basis, taking into account the hydrology and topography of the site, as well as applicable best management practices.
7. Grants will be capped at \$500,000 per project.
8. Public access to property protected with grant money is not required.
9. Property interests must only be obtained from a willing seller.

**Match requirement**

At least 50% of the project cost must be provided by matching funds.

## **Process**

1. In order for a project to be considered for funding, the applicant must submit an eligibility application by the deadline established by the Commission for the grant round. The purpose of the eligibility application is to provide information to enable the Department or the Commission to screen projects by determining whether the project includes eligible land, whether it complies with the Conditions and Match Requirements listed above, and whether the project meets any other criteria the Commission deems relevant. The Commission may direct the Department or a subcommittee to examine the eligibility application and determine whether the project should be given further consideration. Such examination shall occur in the manner directed by the Commission.
2. If, after review of the eligibility application is complete, the application is designated for further consideration, the applicant must submit a funding application. The purpose of the funding application is to provide information needed for the Commission or a review panel appointed by the Commission to fully evaluate the merits of the project and determine whether funding will be provided. The applicant must submit a funding application by the deadline established by the Commission for the grant round.
3. After the deadline for submission of funding applications, the Department will conduct site visits and compile a summary of each application to facilitate review by the Commission or a review panel established by the Commission, taking into account the project evaluation criteria listed in Tables 1 and 2 as applicable. Applicants will be expected to participate in site visits.
4. Following site visits and the compilation of project summaries, a review panel established by the Commission may meet to review applications and application summaries, and to develop recommendations regarding the funding of projects. This information will then be provided to the Commission.
5. The Commission will determine which eligible projects will receive funding and to what extent.
6. If funding is awarded, the recipient will be notified by the Department through a notification of funding award letter and shall thereafter enter into a Grant Agreement with the Department upon approval of the Governor & Executive Council.
7. After Governor & Council approval of the Grant Agreement and before the grant is disbursed, the recipient shall submit to the Department a Final Closing Package.
8. A Final Closing Package must be submitted by the completion date stated in the Grant Agreement or the recipient must submit a request for an extension to the Grant Agreement, which must be approved by the Governor and Executive Council.
9. The Department will review the information provided in the Final Closing Package to ensure that it contains the information required by applicable Department rules. If the

Department determines that the Final Closing Package contains the necessary information, the Department will disburse the grant .

10. The Commission may, through an annual budget or other decision, establish other priorities and goals in order to incentivize projects that fulfill the purposes of RSA ch. 485-F.

#### **Other Requirements & Additional Costs**

1. An environmental review may be required as part of the grant disbursement process in the manner determined by the Commission. Negative environmental impacts may be a basis for withdrawing funding.
2. To the extent possible, grant procedures will be in accordance with Department rules specific to the DWGTF.
3. Project cost overruns will not be covered unless specifically approved by the Commission.
4. No-cost time extensions of scheduled completion dates due to excusable delays can be granted by the Department subject to approval by the Governor and Executive Council when required.
5. The Recipient shall ensure that the property conserved is monitored to determine compliance with easements and deed restrictions, and shall report annually to the Department as required by Env-Dw 1002.26. The State, through the Department, shall have a third-party right to enforce all relevant easements and deed restrictions. All documents shall include language acknowledging this right.

#### **Signage and Publicity**

Unless otherwise specified by the Commission, all recipients will be required to place a sign with the program logo as approved by the Commission at the project site. The Commission may also determine appropriate conditions regarding placement and maintenance of signage. Signage specifications will be provided by the Department. Costs associated with required signage shall be considered eligible project costs.

#### **Waiver**

The Commission, in its discretion, may waive any of these rules if granting the waiver will result in circumstances that better fulfill the purpose and intent of these rules and RSA ch. 485-F or if strict adherence to the rule being waived would not be in the best interest of the public, the environment, or the DWGTF program. Statutory requirements cannot be waived.

## TABLE 1

### Project Evaluation Criteria for All Projects

For all projects, the Commission may consider, when relevant:

1. Support for the project expressed by affected municipalities and public water systems.
2. Source water protection currently in place by any PWS whose source will be protected.
3. Whether a land conservation plan identifies the subject parcel(s) as high priority for conservation specifically for water supply or water quality protection.
4. The proximity of the project to a water supply well or intake.
5. Frontage on rivers, streams, tributaries, and other surface waters for projects related to surface water source protection.
6. The type of water system whose source is to be protected (municipal, community, etc.).
7. The population served by the water system.
8. The number of sources to be protected.
9. The total acreage of eligible land included in the project (including match properties).
10. The value of match (percentage of total project cost) in excess of required match.
11. Project readiness. Considerations include the extent to which project costs have been determined, the willingness of the landowner(s) to proceed with the project and accept the program's Conditions have been documented, preliminary title work has been completed, the applicant has developed a reasonable funding plan, and match funding (including in-kind) has been secured.
12. Documented efforts, whether successful or not, to obtain match funding for the project from sources other than the DWGTF.
13. Documented development pressure in the vicinity of the project.

## TABLE 2

### Future Source Evaluation Criteria

The following criteria may be used by the Commission or subcommittee to determine whether projects related to possible future sources should receive funding.

Whether:

1. An existing community or non-transient, non-community water system or municipality has identified the need to protect the subject parcel(s) as a potential or likely future water supply source.
2. A public water system or municipality has demonstrated the need for a future source;
3. A public water system or municipality has evaluated possible options for a future source and has consequently selected the subject parcel(s).
4. The value of the subject parcel(s) has been demonstrated with a pumping test and water quality data.
5. The feasibility of connecting the future source to an existing or future water system has been demonstrated.
6. The water system or municipality has made or is committed to making a substantial financial commitment to developing a new source associated with the area proposed to be protected.
7. A preliminary WHPA delineation that is consistent with the Department's applicable new well siting rules has been completed.
8. The applicant has demonstrated that factors such as potential or existing sources of contamination or the impact of a large groundwater withdrawal will not prevent the area from being approved as the site of a new public water supply well.
9. The applicant intends to convey water development rights to a water system or municipality.