

POLICY GUIDELINES FOR THE IDAHO WATER QUALITY COST-SHARE PROGRAM FOR AGRICULTURE

Current as of February 23, 2022

This agency guidance document is not new law but an agency interpretation of existing law, except as authorized by law or as incorporated into a contract.¹

Agency guidance is defined as “all written documents, other than rules, orders, and pre-decisional material that are intended to guide agency actions affecting the rights or interests of persons outside the agency.”² “Agency guidance” includes policy statements, manuals, interpretations of law or rules, memoranda, and other material of general applicability.³

Any questions about this document or input on the document can be directed to Delwyne Trefz.

¹ See Governor Little’s Executive Order No. 2020-02, *Transparency in Agency Guidance Documents*, <https://gov.idaho.gov/wp-content/uploads/2020/01/eo-2020-02.pdf>; see also I.C. § 67-5250.

² I.C. § 67-5250(2).

³ I.C. § 67-5250(2).

Purpose

This policy provides guidance to the Soil and Water Conservation Commission (SWCC) staff in reviewing cost-share applications submitted to the SWCC or local soil conservation districts⁴ for the purpose of financing agricultural, grazing, or other conservation improvements, projects, or implementations of the Water Quality Program for Agriculture (WQPA) pursuant to Idaho Code section 22-2734.

Revisions

This policy updates the SWCC's previous policy guidelines for WQPA last revised July 1, 2009.

I. Policy

It is the policy and intent of the SWCC to administer WQPA cost-share funds to eligible applicants⁵ or participants⁶ through local soil conservation districts pursuant to Idaho Code section 22-2734.

II. Application Process

Idaho Code section 22-2734 allows eligible participants or applicants to file an application with the SWCC or a local soil conservation district for a cost-share contract or project from the SWCC for the "purpose of financing agriculture, grazing or other conservation improvements, projects or implementations" of WQPA.⁷ Pursuant to Idaho Code section 22-2735(4), the SWCC may enter into contracts and establish procedures to be followed in applying for eligible improvements, projects, and plans for the effective administration of WQPA.

Pursuant to the above-mentioned policy, the SWCC should review applications and project plans submitted by local conservation districts acting as project sponsors⁸ identifying conservation improvements or projects in the local conservation district, based on a fiscal year beginning on July 1 and ending on June 30.

In accordance with Idaho Code section 22-2734(2), the SWCC will review local district project plans to determine whether the plans are satisfactory. The SWCC should make recommendations to project sponsors upon request regarding the SWCC preferred accounting software and

⁴ "'District,' 'conservation district,' 'soil conservation district,' or 'soil and water conservation district' means a governmental subdivision(s) of this state, and a public body corporate and politic, organized in accordance with the provisions of" chapter 27, Idaho Code. I.C. § 22-2717(8).

⁵ "'Eligible applicant' means an individual agricultural owner, operator, partnership, corporation, conservation district, irrigation district, canal company or other agricultural or grazing interest." I.C. § 22-2717(10).

⁶ "'Participant' means an individual agriculture owner, operator, partnership, private corporation, conservation district, irrigation district, canal company or other agriculture grazing interest approved by the commission [SWCC] or an in individual agricultural owner, operator, partnership, or private corporation approved for implementation of conservation improvements, projects, or the water quality program for agriculture." I.C. § 22-2717(17).

⁷ I.C. § 22-2734(1).

⁸ "'Project sponsor' means a conservation district, irrigation district, canal company, or other agricultural or grazing interest, as determined appropriate by the commission, that enters into a conservation improvement or water quality project agreement with the commission." I.C. § 22-2717(19).

accounting policies and procedures.

The SWCC should consider the following attachments and explanations regarding a proposed project plan when determining whether a plan is satisfactory:

1. An environmental site assessment (ESA), proximity of project to a Clean Water Act Section 303(d) listed water source, or groundwater status of the subject waterbody;
2. Critical acres that will be treated;
 - Lands eligible for cost-share assistance in a project area are those designated by the local soil conservation district, with concurrence of the SWCC, as critical areas or pollution sources. Critical areas or sources should have a technical basis for identification.
3. Estimated benefits of the proposed treatment;
4. Total best management practice (BMP) costs;
 - The SWCC will prioritize critical areas for BMP implementation based on a tiered approach to targeting treatment units.⁹
5. BMPs to be installed and their quantity;
 - Site-specific BMPs needed to treat critical areas or sources of pollutants should be identified in the participant's water quality plan.
6. BMP cost-sharing;
7. Matching funds;
8. Other sources of funding;
9. A cost list;
 - Average costs should be developed for each practice or component of a practice identified in the work plan as eligible for financial assistance.
 - Average costs are determined by the actual cost to land users for installing measures and practices.
 - Actual cost includes labor, operating supplies and other direct costs required for physical installation of a measure or practice.
 - Loss of income should not be considered in determining average costs.
10. Critical area description; and
11. Treatment area map.

If the SWCC determines that a plan is not satisfactory, it is required to return the application and plan to the local conservation district and make recommendations as are considered necessary by the SWCC to make the application satisfactory pursuant to Idaho Code section 22-2734(2). Upon the SWCC determining that a local conservation district's application and plan is satisfactory, Idaho Code section 22-2734(2) requires the SWCC to consider the application for funding.

⁹ Tier 1: Fields directly adjacent to either the tributary of concern or a drain to the tributary of concern, or fields having a direct and substantial influence on the tributary of concern. Tier 2: Fields in the subwatershed with an indirect, yet substantial influence on the tributary of concern. Tier 3: Fields upland in the subwatershed that indirectly influence the tributary of concern.

Critical areas should undergo site-specific evaluations to determine the nature of contribution and priority of each tier and overall strategies for achieving water quality objectives.

Pursuant to Idaho Code section 22-2734(3), the SWCC may approve a cost-share contract if, after review, evaluation, and investigation, the SWCC finds the following:

1. The participant or application is responsible and qualified;
2. The project or conservation improvement demonstrates public benefit;
3. The SWCC has reasonable assurance that the participant or applicant will adhere to contract terms; and
4. The SWCC has funding available.

Idaho Code section 22-2735(2) allows the SWCC to enter into contracts with approved applications concerning eligible improvements, projects, or plans. However, any such contracts must include in substance, at a minimum, the following provisions pursuant to Idaho Code section 22-2735(2):

1. An estimate of the reasonable costs of the project, plan, or improvement as determined by the SWCC;
2. The terms under which the SWCC may unilaterally terminate the contract and/or seek repayment of sums already paid for an applicant's noncompliance with the terms and conditions of the contract and/or the provisions of Chapter 27, Title 22 of Idaho Code; and
3. An agreement from the applicant, binding for the life of the eligible improvements, plans, or projects:
 - To develop water quality plans for landowners and provide payments to landowners for installation of BMPs;
 - To determine payment rates in conjunction with the SWCC's BMPs;
 - To establish a method for administration and provisions for technical assistance to landowners in conjunction with the SWCC;
 - To allow the State to make payments up to the estimated reasonable cost for BMP technical assistance, installation, and project administration of an eligible project;
 - To develop and secure the approval of the SWCC of plans for operation of the eligible project;
 - To ensure that the local matching share of the cost is provided;
 - To assure an adequate level of landowner participation and application of BMP to ensure water quality goals are met.

In reviewing, evaluating, and investigating a cost-share contract, the SWCC should consider the following criteria in determining whether the necessary findings set forth in Idaho Code section 22-2734(3)(a-d) are found:

1. The status of an ESA;
2. The ground water quality protection area;
3. Whether any beneficial uses are affected;
4. The relative ability of the proposed treatment to protect the resource;
5. The readiness of the project sponsor to proceed;
6. The readiness of applicant or participant to implement the plan;
7. The availability of technical assistance;
8. The availability of supplementary funding sources;

9. Whether water use efficiency is improved; and/or
10. Whether land use goals or ecological processes are limited by suboptimal management of natural precipitation or by inefficient use of irrigation water.

Once the SWCC approves the cost-share contract and obtains all necessary documents, the SWCC will make funding available pursuant to Idaho Code section 22-2734(4). In accordance with the policy described above, eligible applicants or participants would then have the opportunity to submit project proposals and proposed contracts to the local conservation district where the SWCC made funding available. Pursuant to Idaho Code section 22-2734(2) local conservation districts shall review, evaluate, and if necessary, investigate “all aspects of the proposed contract or project” within thirty (30) days of receipt of an application.

The project participant or applicant’s conservation plan should be signed by the participant or applicant and a technical entity and approved by the local soil conservation district, unless otherwise authorized by the SWCC.

Idaho Code section 22-2735(1) prohibits the SWCC from making payments that exceed the estimated reasonable cost of an eligible improvement, project or plan.

After the SWCC has made funding available, the SWCC should request assistance from project sponsors at the beginning of each fiscal year to develop an estimate of project expenses for that year and the remaining life of each project. The SWCC should also request complete financial reports from sponsoring entities to be considered for approval at regularly scheduled meetings, regardless of the amount of project activity. Finally, the SWCC should request documentation of project matching funds from each project sponsor.

The SWCC should send funds to meet estimated administrative costs to each project sponsor semi-annually, beginning with each fiscal year, based on the amount projected. The SWCC may consider allocating up to 10% of the total amount of the project grant for administrative costs over the life of the project. The SWCC should consider administrative costs charged for actual time spent on contract administration and project activities, and per diem and mileage rates should be consistent with those established by the Idaho State Board of Examiners.

The SWCC may enter into contracts to provide technical assistance to applicants that have entered into agreements with the SWCC pursuant to Idaho Code section 22-2735(3). However, Idaho Code section 22-2735(3) requires that a contract to provide technical assistance must include, in substance the following provisions:

1. An estimate of the reasonable cost of technical assistance; and
2. The terms under which the SWCC may unilaterally terminate the contract and/or seek repayment of sums paid pursuant to the contract because of an applicant’s noncompliance with the terms and conditions of the contract, SWCC rules, or the provisions of Title 22, Chapter 27 of Idaho Code.

Pursuant to Idaho Code section 22-2735(5), all contracts shall be subject to approval by the attorney general as to form. Idaho Code section 22-2735(5) further requires that payments made

by the State pursuant to a contract shall be made “after audit and upon warrant as provided by law on voucher approved by the chairman and the administrator” of the SWCC.

III. Statutory Application Requirements and Accompanying Information

Pursuant to Idaho Code section 22-2734(1), the SWCC may dictate the manner and form in which applications must be filed. The SWCC should make standardized application forms available to applicants and participants. At a minimum, Idaho Code section 22-2734(1)(a-d) requires the following:

1. A description of the purposes and nature of the projects and improvements requiring cost-sharing;
2. Be accompanied by or set forth a plan identifying the conservation projects or improvements, including economic and technical feasibility data and estimated costs as may be required by the SWCC;
3. Indicate whether money from sources other than that which is being sought by application will be used for costs, and whether the applicant is pursuing the alternate source of money or if the alternate source of money is available; and
4. Show the SWCC that the proposed project is economically justified and technically feasible.

The SWCC may, pursuant to Idaho Code section 22-2734(1), also require accompanying information to an application. Therefore, the SWCC determines that the following information should accompany an application to aid the SWCC in processing applications:

1. A completed Agricultural Total Maximum Daily Load (TMDL) Implementation Plan;
2. A completed Ground Water Quality Management Plan; or
3. A Watershed Plan developed through PL-566, Cooperative River Basin Study, State Agricultural Water Quality Program, Comprehensive Aquifer Management Plan or equivalent process.

IV. Project Cost-Sharing

Cost-share funding from this program should be limited to BMP component practices included in the Idaho Agricultural Pollution Abatement Plan or those with accepted NRCS standards. The SWCC will review and consider all project plan cost-share practices and rates of operations when determining whether to approve an application and grant funding.

Cost-share funding from this program should only be provided to the applicant, participant, technical entity, and sponsor for actions initiated after contract approval, and funding from this program and other state sources should not exceed ninety (90) percent of the total project cost. Total program cost-share funds from all sources to include private, state, and federal funds, should not exceed one hundred (100) percent of the actual practice cost.

Cost-share funding from this program should be limited to a maximum of \$50,000 per cost-share contract, unless otherwise authorized by the SWCC. Cost-sharing funds can be used to supplement

and protect lands enrolled in the Conservation Reserve Program (CRP) where the SWCC has determined that additional practices are necessary. Examples of issues requiring additional practices include water and sediment control basins that help to reduce gully erosion, trap sediment, and improve downstream water quality. However, cost-sharing funds should not be authorized for irrigation system installation or improvements on lands which are in the CRP or those lands where the CRP cover has been removed within the first growing season following contract expiration.

Matching funds should total at least twenty-five (25) percent of the total project costs listed in the project agreement. For matching fund purposes, salaries of individuals may be used if known and appropriate. Matching funds can include all project time and expenses not reimbursed by state funds. Examples of matching funds are non-state technical assistance time, vehicle use, land operator time, equipment use, and material costs.

Finally, should an applicant or participant seek to modify a cost-share contract, the SWCC should review modifications resulting in overall contract cost increases by ten percent (10%) based on the above stated procedure and statutory guidelines. The SWCC should also review and consider for approval of all lease agreements and purchase of equipment items greater than \$500.

V. Project Priority List and Review

Project applications will be reviewed by a regional team consisting of SWCC field staff from the region where the application was submitted. The team will receive input and assistance from the Natural resources Conservation Service (NRCS), the Idaho Department of Environmental Quality (DEQ), and relevant conservation district representatives. In reviewing the applications, regional teams can make recommendations on project priority and submit these recommendations to SWCC staff located in Boise, Idaho.

The SWCC is required to establish and maintain a priority list for WQPA projects pursuant to Idaho Code section 22-2730. Project applications should be added to the SWCC's project priority list if the applications and project plans are consistent with statutory program criteria. The following factors may be considered when reviewing and ranking applications:

1. Is there a clear water quality and funding need?
2. Where is the proposal area in relationship to an identified water quality concern, including a 303(d) listed waterbody, Nitrate Priority area, or other point of concern?
3. Does the project have a strong likelihood of improving water quality?
4. What are the beneficial uses, pollutants, and approved TMDL(s) and/or watershed plan(s) being addressed through implementation of the proposal?
5. Are expected costs reasonable in proportion to expected benefits?
6. What is the expected lifespan of the project and is there reasonable assurance that the project will meet the expected lifespan?
7. Is this a shovel ready project with a reasonable implementation scheduled?
8. Can the amount of money requested be spent in a reasonable amount of time?
9. Does the applicant or participant have sufficient knowledge, experience, and capability to implement the project or plan?

10. Has the applicant or participant successfully completed a funded project in the past?
 - If so, were the project completed and money spent within the contract period, and was the contract followed and work completed?
11. Does the project propose to monitor BMP effectiveness and share the results with the public?
12. Does the project include an educational outreach component to support long-term community support and stewardship?
13. Does the application demonstrate community support for implementation of the project?
14. Is water use efficiency improved?
15. Are land use goals or ecological processes limited by suboptimal management of natural precipitation or by inefficient use of irrigation water?

After the regional team submits priority recommendations the Boise staff of the SWCC, the two groups should review and consider the recommended priority ranking of the project before submitting a final recommendation to SWCC for decisions on project funding.

The Idaho Soil and Water Conservation Commission approved this policy on February 23, 2022.