

## **Title 15. Natural Resources and Economic Development**

### **Chapter I. Arkansas Natural Resources Commission, Department of Agriculture**

#### **Subchapter A. Generally**

#### **Part 2. Financial Assistance**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Introduction[.] Water Resources Development General Obligation Bond Program. The Water Resources Development General Obligation Bond Program (Ark. Code Ann.

§15-22-601 et seq.) was established by Act 496 of 1981. The Act authorized the Arkansas Natural Resources Commission to apply bond proceeds for the purpose of providing or assisting in providing for the acquisition, development and utilization of surface and subsurface water resources, water storage, impoundment and control facilities and water treatment facilities for the use and benefit of the public and for the conservation and distribution of water for domestic, agricultural, industrial and other essential purposes in or from reservoirs, impoundments or other storage facilities.

Water Development Fund Program. The Water Development Fund (Ark. Code Ann. §15-22-507 et seq.) was established by Act 217 of 1969. The Act authorized the Arkansas Natural Resources Commission to engage in any water development project, or any phase thereof, in cooperation with any political subdivision or agency of the State of Arkansas; provided it be included in and made part of the State Water Plan.

Water, Sewer, and Solid Waste Management Systems Program. The Water, Sewer, and Solid Waste Management Systems Program (Ark. Code Ann. §14-230-101 et seq.) was established by Act 274 of 1975 and was originally administered by the Department of Local Services. Act 764 of 1981 transferred the administration of the program to the Arkansas Natural Resources Commission effective July 1, 1981. Act 960 of 1997 amended the Act to increase the level of funding that can be provided under the Act,

simplified and streamlined the application process and clarified the terms and conditions under which financial assistance can be provided. The Act authorizes the Arkansas Natural Resources Commission to assist cities, towns, improvement districts, water associations, regional wastewater treatment districts and counties in financing the construction of facilities for water, sewer and solid waste systems.

Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program. The Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program (Ark. Code Ann. §15-22-701 et seq.) was established by Act 686 of 1987. The Act authorized the Arkansas Natural Resources Commission to apply bond proceeds for the purpose of financing waste disposal and pollution abatement facilities to serve the inhabitants of the State of Arkansas.

Water Resources Cost Share Revolving Fund Program. The Water Resources Cost Share Revolving Fund Program (Ark. Code Ann. §15-22-801 et seq.) was established by Act 257 of 1989. The Act authorized the Arkansas Natural Resources Commission to provide grants and loans to the State of Arkansas and its local political subdivisions for the purpose of funding the non-federal share of their financial obligations required under any local cooperative agreements entered into with the federal government in connection with financing a water resources development project.

Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program. The Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program was established by Act 607 of 1997. The Act authorized the Arkansas Natural Resources Commission to apply bond proceeds for the purpose of financing and refinancing the development of water, waste disposal, pollution control, abatement and prevention, drainage, irrigation, flood control, and wetlands projects to serve the citizens of the State of Arkansas."

"These rules have been promulgated and adopted by the Arkansas Natural Resources Commission (the "Commission") pursuant to and as authorized by Act 217 of 1969, Act 274 of 1975, Act 496 of 1981, Act 686 of 1987, Act 257 of 1989, Act 698 of 1997, Act 960 of 1997, and Act 607 of 1997 (collectively, the "Acts"), and as otherwise authorized under the general laws of the State of Arkansas (the "State"). "

## **Subpart 1. Introductory Provisions**

### **15 CAR § 2-101. Scope.**

This part has been enacted for the purpose of implementing and administering the powers, duties, and responsibilities of the Arkansas Natural Resources Commission as provided by the acts, which provide generally for commission-approved financial assistance with respect to certain works and projects for the development and utilization of water resources, water, sewer, and solid waste management systems, and waste disposal and pollution abatement facilities within the state.

**Authority.** Arkansas Code § 15-20-206.

### **15 CAR § 2-102. Policy statement, interpretation, and application of rules.**

(a)(1) It is the duty and policy of the Arkansas Natural Resources Commission to fully and expeditiously implement and administer the objectives, purposes, and intent of the Water Resources Development General Obligation Bond Program, the Arkansas Water Development Fund Program, the Water, Sewer, and Solid Waste Management Systems Program, the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program, the Arkansas Water Resources Cost Share Revolving Fund Program, and the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program (collectively, the "programs") authorized under the provisions of the acts.

(2) The instant rules are accordingly adopted to assist in the effectuation and implementation of this duty and policy.

(b) Due to the very specialized nature and complexity of administration of the financial assistance programs, the rules, modes of procedure, commission policies, and guidelines herein provided shall, in all instances, be subject to and given a liberal, reasonable, fair, and impartial construction, interpretation, and application to the end that the intent and purposes hereof may be obtained in compliance with the:

- (1) Laws of the state; and
- (2) Public purposes sought to be served thereby.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-103. Definitions.**

Unless the context otherwise requires, the use of certain capitalized words and terms herein which are not otherwise defined shall refer to the meanings of such words and terms as provided in the applicable act or acts.

**Authority.** Arkansas Code § 15-20-206.

**Subpart 2. Procedure**

**15 CAR § 2-201. General procedure.**

The general procedure to be followed in the financial assistance application, review, and consideration process shall be as follows:

(1) **Preapplication.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Arkansas Natural Resources Commission for purposes of making arrangements for participating in a preapplication conference between:

- (i) Commission staff;
- (ii) Applicant (or representative);

(iii) Applicant's legal, financial, and engineering advisors; and  
(iv) Such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the preapplication conference, preliminary matters respecting the applicant, the proposed project, and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the:

- (i) Applicable program; and
- (ii) Specific application requirements and procedures;

**(2) Water and wastewater projects.**

(A) Prior to submission of a formal application for water and wastewater projects, the applicant must comply with the procedures established by the Water/Wastewater Advisory Committee (WWAC), including submission of seven (7) copies of a preapplication to the WWAC.

(B) This procedure is not required for emergency projects as defined in 15 CAR § 2-202(b);

**(3) Application.**

(A) Applicant shall initiate application review and consideration by submission to the commission of an application for financial assistance.

(B) In all instances, applications must be written in the form and must include substantive content meeting the requirements of Subpart 3 of this part.

(C)(i) If the applicant is requesting commission funds from more than one (1) program, separate applications must be made with respect to the funds requested from each program.

(ii) However, every application for funds under a particular program may be considered by the commission at its discretion as a request for financial assistance under any other available program;

**(4) Preliminary review.** Upon receipt of the application by the commission, the application shall be given preliminary review by commission staff for an initial determination of:

- (A) Project eligibility;

(B) Applicant eligibility; and

(C) Completeness and accuracy of all required and necessary information;

**(5) Final review.**

(A) Subsequent to preliminary review and based upon the determination of eligibility and adequacy of information submitted, the application shall thereafter be reviewed by commission staff for recommendation to the commission.

(B) In this endeavor, commission staff shall review and investigate the application for the purpose of determining project compliance with:

(i) The approval criteria set forth in Subpart 4 of this part; and

(ii) Such other considerations and factors deemed relevant and necessary for staff recommendation purposes.

(C) In addition, the history of the applicant with respect to the achievement of objectives in previous commission grants, loans, and leases may be examined.

(D) Where applicable, commission staff may contact state and federal government entities who have responsibilities associated with the project;

**(6) Public hearing.**

(A) If the Director of the Arkansas Natural Resources Commission determines that a public hearing would be beneficial in considering an application, he or she may schedule and conduct a hearing in the locality to be served by the project proposed in the application.

(B) The purpose of the public hearing is to obtain written and/or oral statements expressing public views concerning the applicant's request for financial assistance.

(C) Verbatim transcripts of such hearings will not be made.

(D) Persons wishing to make extensive comments should provide a written copy thereof to the commission.

(E)(i) The date, time, and place of the public hearing will:

(a) Be furnished to all concerned parties; and

(b) Also be published in a newspaper of statewide circulation for a reasonable amount of time.

(ii) It is the policy of the commission that a "reasonable amount of time" shall normally mean that the publication of the notice of public hearing shall be for two (2) consecutive weeks by two (2) insertions seven (7) days apart before the date of the hearing;

(7) **Commission review and consideration.** Upon completion of staff review, the submitted application with staff recommendations, if any, shall be:

(A) Placed upon the commission's meeting agenda as promptly as practicable; and

(B) Thereby submitted to the commission for commission:

(i) Review;

(ii) Consideration; and

(iii) Action; and

(8) **Memorandum of agreement.** The applicant funded by the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program will enter into a joint memorandum of agreement (MOA) with the commission for scheduling the financial assistance, planning and design, and construction phases.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-202. Commission action.**

(a) After reviewing and considering the submitted application, the Arkansas Natural Resources Commission may proceed to take one (1) of the following alternative forms of commission action on the application:

(1) The commission may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate project closing and/or the disbursement of funds;

(2) The commission may:

(A) Retain the application under advisement for further consideration or continue the hearing on the same for later ruling and disposition; and

(B) Withhold ruling on the application pending a further hearing and/or submission to the commission of such further or additional information as the commission may require for application consideration purposes;

(3) The commission may reject and deny the application, in whole or in part;

(4) The commission may approve and grant the application, in whole or in part, contingent upon the:

(A) Applicant taking certain actions;

(B) Existence of adequate and available program funds; or

(C) Receipt and approval by commission staff of any outstanding and necessary:

(i) Material;

(ii) Information;

(iii) Documents;

(iv) Verifications; or

(v) Other authorization;

(5)(A) The commission may place an application on a priority list pending the availability of program funds.

(B) Applications on a priority list will be given further consideration regarding approval or denial when adequate funds become available;

(6) The commission will act on an application based on:

(A) The information contained therein;

(B) Testimony given at the public hearing; and

(C) The staff's recommendations;

(7)(A) Action will normally be taken by the commission within one (1) calendar year of the time application for financial assistance is made.

(B) Action may be delayed on certain applications for projects dependent on other financing sources; and

(8) The Director of the Arkansas Natural Resources Commission shall, within ten (10) days, notify the applicant of the final action of the commission in accepting, modifying, or rejecting the application.

(b)(1) Emergency applications may be submitted at any time.

(2) An emergency exists when there is an interruption of normal service that:

(A) Threatens life or health; and

(B) Cannot be resolved within a reasonable period of time.

(3) The commission or director may require documentation of such emergency by:

(A) The Engineering Section of the Department of Health;

(B) The Division of Environmental Quality; or

(C) Other appropriate state and federal agencies.

(4)(A) The director shall have the discretionary authority to disburse up to one hundred thousand dollars (\$100,000) in program funds in an emergency situation without requiring the applicant to follow the normal application review and consideration process.

(B) Such disbursement shall be made only after consultation with and concurrence of the Chair of the Arkansas Natural Resources Commission.

(C) Any emergency disbursements made pursuant to this provision shall be reported to the commission as a whole at its next regularly scheduled meeting.

(c) Upon approval and grant of an application, the commission may:

(1) Authorize loan closing and the execution of all necessary closing documents and instruments by the chair or other designated commission representative or representatives;

(2) Accordingly authorize and provide for disbursements; and

(3) Authorize such further or additional action as may be necessary to complete and implement the approved transaction, including the imposition and collection of such fees and charges as may be fixed by the commission to be paid by an applicant with respect to the commission's assistance for a specific project.

(d)(1) The director shall have the discretionary authority to extend the time granted by the commission to an applicant to comply with specific terms and conditions when, in the director's judgment, substantial compliance has been achieved by the applicant.

(2) Any such extension granted pursuant to this provision shall:

(A) Not exceed ninety (90) days; and

(B) Be granted only after consultation with the commission chair.

(3) Any extensions granted pursuant to this section shall be reported to the commission as a whole at its next regularly scheduled meeting.

**Authority.** Arkansas Code § 15-20-206.

### **Subpart 3. Applications for Financial Assistance**

#### **15 CAR § 2-301. Application content.**

(a) The Arkansas Natural Resources Commission provides application forms for financial assistance except for the Arkansas Water Resources Cost Share Revolving Fund Program.

(b) All applications must be written and consistent with the requirements stated under this subpart.

(c) One (1) copy of the application must be submitted to the commission for water and wastewater projects.

(d) Four (4) copies of the application are required for types of projects other than water or wastewater.

**Authority.** Arkansas Code § 15-20-206.

#### **15 CAR § 2-302. Required general information.**

The following general information, where deemed by the Arkansas Natural Resources Commission to be applicable to the applicant and project under

consideration, or where required with respect to the specific program funds for which application is made, must be submitted by applicant within each application:

(1) Applicant's:

- (A) Full, true, and correct legal name;
- (B) Office address;
- (C) Mailing address, if different from office address;
- (D) Telephone number;
- (E) Fax number; and
- (F) Email address, if available;

(2)(A) Authority of law under which applicant was created and established and the independent legal authority, including supporting documentary evidence as requested by the commission, under which application is made.

- (B) Applicant must identify and describe the nature of its legal identity.
- (C) See Subpart 7 of this part;

(3) Certified copy of the ordinance, resolution, or other specific authorizing instrument or action reflecting applicant's authority for making application to the commission;

(4) Name, address, telephone number, fax number, and email address, if available, of project engineer;

(5) Name, address, telephone number, fax number, and email address, if available, of:

- (A) Project legal counsel; and
- (B) If applicable, financial consultant or, if assessment-based repayment proposed, assessor;

(6) Total amount of funds requested for project assistance from the commission, including:

(A) A statement of the specific uses and purposes for which such funds are intended to be applied; and

(B) The program under which financial assistance from the commission is sought;

(7) A brief but adequate description of the proposed project for which application is made, including but not limited to the following:

(A) Project location;

(B) Nature of project;

(C)(i) Comprehensive statement clearly:

*(a)* Delineating the customer service area;

*(b)* Demonstrating project need; and

*(c)* Demonstrating the degree and extent of local support for the project.

(ii) Such statement:

*(a)* Must be in sufficient detail to support and justify the project;

and

*(b)* Should describe all aspects of present local support and approval for the project.

(iii) Applicant may include letters or statements of support from any interested persons or agencies;

(D) Anticipated total project cost;

(E) Listing of all financing institutions, lenders, or other funding sources, if any, participating in financing the project or other projects related to the project, including, where applicable, the following information:

(i) Statement by each such participating entity reflecting the relative interest, support, and commitment of the participating lender or other funding source in and to the project;

(ii) Statement reflecting total project cost allocation between lenders or other funding sources;

(iii) Statement and description of all project service areas, project security, or project revenues already pledged or to be pledged to other participating lenders or fund sources; and

(iv) Statement and description of other projects or service areas, if any, related to the project and information satisfying the requirements of subdivisions (a)(7)(E)(i)–(iii) above with respect to each such other related project, if any; and

(F) Preliminary project plans and specifications as may be necessary to reflect general engineering feasibility of the project;

(8) Anticipated project timetable, including:

(A) Anticipated dates for completion of plans and specifications;

(B) Arkansas Water Plan compliance review, if required;

(C) Department of Health and/or Division of Environmental Quality approvals;

(D) Expected award of bids; and

(E) Project construction commencement and completion dates;

(9)(A) Nature and amount of security to be pledged to secure the applicant's repayment obligations to the commission for the financial assistance requested.

(B) If real or personal property, or any interest therein, other than or in addition to the project itself is to be pledged by applicant to secure the applicant's repayment obligations, applicant must submit a current statement of the nature and extent of all outstanding liabilities or indebtedness against such property, if any.

(C) If applicant is not the owner of such real or personal property to be pledged, applicant must:

(i) State and describe the nature and extent of applicant's legal or equitable interest in such property; and

(ii) Provide a statement setting forth who or what entity owns such property including details of all outstanding liabilities or indebtedness against such property;

(10) A firm estimate of annual (or other interval) revenues to be derived from the project or other sources of revenue available to be paid to the commission for project cost repayment, with supporting detail and assumptions expressed, and such additional financial information as may be necessary to evaluate general economic feasibility of the project, including the ability of the project to generate sufficient

revenues to repay the commission the cost of providing financial assistance for the project, together with such fees and charges as may be imposed by the commission;

(11) A statement of the:

(A) Specific manner and means and projected timetable within which applicant proposes to finance the project, considering all sources of financing; and

(B) Timetable to commence making repayments to the commission;

(12)(A) Information reflecting the availability to applicant of reserve or contingency funds that could and, if necessary, would be used to meet actual project costs that exceed applicant's original total estimated cost of the project.

(B) Such information should include the:

(i) Nature, source, amount, and liquidity of such reserve or contingency fund; and

(ii) Applicant's commitment and ability to utilize such funds when and if necessary for such purposes;

(13)(A) Certified copies of applicant's previous three (3) years of annual audited financial statements, if available, and a statement of applicant's financial condition, including a current statement of all outstanding indebtedness of applicant or related entities, including but not limited to all outstanding general obligation or revenue debt that might affect applicant's overall financial condition.

(B) In connection with such statement of indebtedness, applicant must list the security given for all such indebtedness;

(14) Description of the nature and division of all applicants' equitable interests in the project if more than one (1) eligible entity will participate in the project;

(15)(A) A statement reflecting the relevant history or current status of applicant's efforts toward obtaining all necessary and incidental rights and privileges needed for project:

(i) Commencement;

(ii) Completion; and

(iii) Operation.

(B) This requirement includes, but is not limited to:

- (i) All necessary legal rights, including water rights;
  - (ii) Licenses;
  - (iii) Easements or permits, whether existing under federal, state, or local law or regulation;
  - (iv) The relative status of secured or outstanding contracting arrangements; and
  - (v) The status of any incidental legal or governmental proceedings, including, but not limited to:
    - (a) The need for environmental impact studies, if not already prepared; and
    - (b) Any future authorizations or approvals required by electors, residents, members, and/or the governing body of the applicant;
- (16) All applicants should submit future capital improvement plans as they may relate to the proposed project or the applicant generally;
- (17) A copy of the current user charge (rate) ordinance/resolution and sewer use ordinance (sewer only), as applicable; and
- (18) Any other information required by law or regulation including without limitation disclosures required by Ark. Exec. Order No. 98-04 (Feb. 27, 1998).

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-303. Additional information for reservoir projects.**

Where financial assistance is sought in connection with an existing or proposed reservoir, the following additional information must be submitted with the application:

- (1) The application should contain a description of all:
  - (A) Estimated firm annual yields; and
  - (B) Proposed reservoir storage capacities;
- (2) A statement containing the:
  - (A) Proposed purposes for which water will be stored or used; and
  - (B) Places of use or potential use for such water;

(3) A statement of the relative allocation of project costs to each project purpose if for more than one (1) purpose; and

(4) A brief description of existing or proposed improvements in the project or project area and a description of all such improvements that may require relocation.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-304. Supplemental information.**

The Arkansas Natural Resources Commission reserves the right to require the applicant to submit such further or additional project information as may be deemed necessary for project review under the particular facts and circumstances of any specific project proposal.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-305. Application verification and approval as to legality.**

(a) All applications for financial assistance shall contain the following statement signed by the chief executive officer of the applicant: "To the best of my knowledge, all statements of fact contained herein are true and correct as of the date hereof."

(b)(1) Additionally, each application shall, at the time of submission, be approved as to legality by applicant's legal counsel.

(2) Such opinion shall normally reflect the:

(A) Valid formation and existence of the applicant;

(B) Due authority of the person or persons signing the application; and

(C) Legality of the means proposed to finance the project.

(c) In addition, the application shall be subject to approval by the Arkansas Natural Resources Commission's legal counsel, if deemed advisable.

**Authority.** Arkansas Code § 15-20-206.

## **Subpart 4. Approval Standards and Criteria**

### **15 CAR § 2-401. General approval standards and criteria.**

In the review and consideration of applications for financial assistance, the Arkansas Natural Resources Commission shall give consideration to the following general and nonexclusive criteria for application approval:

**(1) Compliance with laws.**

(A) The applicant and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations (including the Arkansas Water Plan, 15 CAR pt. 29, where applicable), and the applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(B) The appropriate state agencies must have had adequate opportunity to review and comment on the proposed project;

**(2) Eligibility.** The applicant and proposed project must be determined to be eligible for the assistance sought;

**(3) Local need, support, and priority.**

(A) The project must be found to be:

(i) Needed in the area to be served; and

(ii) Sufficient, as proposed, or reflect satisfactory progress toward serving such needs.

(B) The commission shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants, including whether the project is:

(i) Meeting known health needs; and

(ii) In an economically depressed or disadvantaged area.

(C) The commission shall also consider the extent and degree of local support, interest, and commitment in and to the proposed project.

(D)(i) No financial assistance will be given to an applicant for use in funding a project that would constitute a duplication of services where adequate

services are currently being provided unless approval for such activity has been given by the commission.

(ii) As a condition of its approval, the commission may require the payment of an equitable portion of the outstanding financial assistance provided;

**(4) Availability of or combination with other assistance.**

(A) The commission shall consider the feasibility and availability of alternative or additional sources of revenue that could be obtained and utilized by applicant for project financing either apart from or in conjunction with commission financial assistance.

(B) In particular, with respect to the following types of projects, the following special actions must have been accomplished:

**(i) Municipal and industrial water supply or sewer systems.**

(a) Applicant must have used or be prepared to use as much of the allotted ten (10) mills for municipal improvements as deemed necessary or feasible.

(b) This requirement is not applicable to:

(1) Regional water districts;

(2) Associations; or

(3) Counties;

(ii) **Flood control and drainage projects.** Applicant must have taxed the benefited area to the maximum practical amount to pay the local share based on comparison with other similar projects; and

(iii) **Engineering feasibility studies.** Local interest should be adequate to ensure that the project will be constructed, providing the:

(a) Feasibility study points out a need; and

(b) Project is feasible;

**(5) Project capacity development feasibility.**

(A) The commission shall consider the project's capacity to meet financial, managerial, and technical standards.

(B) The project's technical feasibility will be addressed in the engineering data submitted.

(C) New water systems must comply with the capacity development requirements of the Safe Drinking Water Act;

(6) **Economic feasibility.** The commission shall consider the apparent economic viability and feasibility of the project as a whole, including:

(A) Proposed or projected costs per customer;

(B) Estimated revenues from the project; and

(C) The adequacy and reliability of estimated revenues necessary for project cost repayment when indicated;

(7) **State and regional needs and public interest.**

(A) The commission shall give consideration to the relationship between the proposed project and the state and regional water resource development needs, as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(B) In particular, such review will take into account whether a project:

(i) Encourages conservation of water resources;

(ii) Encompasses use of less stressed water resources;

(iii) Seeks a more efficient use of existing resources; or

(iv) Possesses similar features providing a benefit to the public

interest in the state as a whole; and

(8) **Availability of funds.** The commission shall take into consideration the current and anticipated availability of assistance funds needed to provide the financial assistance requested.

**Authority.** Arkansas Code § 15-20-206.

### **15 CAR § 2-402. Criteria applicability.**

(a) The general criteria set forth in this subpart are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Arkansas Natural Resources Commission.

(b) Such criteria shall not be deemed appropriate for strict application or interpretation, nor shall such criteria be deemed exclusive.

(c) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(d) The criteria and standards set forth in this subpart shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the commission's judgment and discretion.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-403. Specific criteria applicable to Water Resources Development General Obligation Bond Program applications.**

[Reserved.]

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-404. Specific criteria applicable to Arkansas Water Development Fund applications.**

(a)(1) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission has established the following rankings for prioritizing Arkansas Water Development Fund applications:

<u>Type of project</u>	<u>Ranking</u>
Public Water Supply	1
Irrigation (water conservation)	2
Flood Control and/or Drainage	3
Erosion and Sediment Control	4
Streambank Stabilization	5
Recreation and/or Fish and Wildlife	6
Hydro-electric Power	7

(2) The above rankings will be used as a general guide, and priority will be based on individual project merits.

(b)(1) Eligible applicants with special needs as determined by the commission will receive priority consideration.

(2) "Special needs" are defined as:

(A) **Elderly.** The applicant has a percentage of elderly residents higher than the average of all Arkansas counties for the sixty-five (65) and over age category as reported in the latest federal decennial census data;

(B) **Low income.** The applicant's residents' per capita income is less than the state's per capita income as reported in the most current federal decennial census data; or

(C) **Unemployed.** The applicant has a percentage of unemployed residents higher than the average percentage for all Arkansas counties according to the latest data published by the Division of Workforce Services.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-405. Specific criteria applicable to Water, Sewer, and Solid Waste Management Systems Fund applications.**

(a)(1) In addition to the approval standards and criteria set out in 15 CAR § 2-401, the Arkansas Natural Resources Commission has established the following rankings for prioritizing Water, Sewer, and Solid Waste Systems Revolving Fund applications:

<u>Type of project</u>	<u>Ranking</u>
Public Water Supply	1
Sewage Systems	2
Solid Waste Collection / Disposal	3

(2) The above rankings will be used as a general guide, and priority will be based on individual project merits.

(b)(1) Solid waste collection and disposal system applications will be judged individually based on the highest potential for protection of the public health and environment.

(2) Such judgment will not exclude lightly populated areas having solid waste problems without the necessary funds to begin a collection and disposal system.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-406. Specific criteria applicable to Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program applications.**

[Reserved.]

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-407. Specific criteria applicable to Arkansas Water Resources Cost Share Revolving Fund Program applications.**

(a) From each year's applications for grants and loans, the Arkansas Natural Resources Commission shall develop a list of water resources development projects that ranks each project in order of its priority.

(b) The priority ranking of water resources development projects shall be based generally on the approval standards set out in 15 CAR § 2-401 and specifically on the following factors:

(1) The overall cost of the project compared to its potential or predicted benefits;

(2) The potential for the project to provide economic development in the area; and

(3) The commitment of any state or local government funds to the project to contribute to the applicant's nonfederal share of the cost of the overall project.

(c) In selecting the applicants to receive grants under the Arkansas Water Resources Cost Share Revolving Fund Program, the following factors shall be taken into consideration by the commission:

(1) The financial ability of the local government applicant to provide the cost sharing funds for the proposed water resources development project including all available tax sources or assessments;

(2) The burden placed on low income, elderly, and unemployed persons if the local government applicant participates in a cost-sharing project and pays for the nonfederal share through a user fee or property tax; and

(3) The amount of fair user fees or other revenues that the proposed water resources development project may reasonably be expected to generate in excess of those that would:

(A) Amortize the local share of the initial cost; and

(B) Provide for its successful operation and maintenance, including depreciation.

(d) No grant under the Arkansas Water Resources Cost Share Revolving Fund Program shall be awarded until the local government applicant has:

(1) Furnished the commission with sufficient proof of the exhaustion of all other funding sources; and

(2) Established that a deficiency exists in the amount of local funds available to finance the nonfederal share of the project.

(e) The final award of a loan or grant for cost sharing purposes shall be made contingent upon actual receipt of federal funding for the federal share of the water resources development project.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-408. Criteria applicable to establishment of terms and conditions for financial assistance.**

In establishing the debt service reserve fund, depreciation reserve fund, or other terms and conditions, the Arkansas Natural Resources Commission may consider the following:

- (1) Health, safety, environmental, and other special needs;
- (2) Overall financial burden on applicant;
- (3) Type of system and system's operation and maintenance costs;
- (4) Applicant's legal, organizational, management, and financial history;
- (5) Type of dedicated revenue or revenues to be used for repayment;
- (6) Debt service coverage from dedicated revenues;
- (7) History of revenue collections and past due accounts; and
- (8) Other criteria, as applicable.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-409. Specific criteria applicable to Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program applications.**

[Reserved.]

**Authority.** Arkansas Code § 15-20-206.

**Subpart 5. Disbursement of Funds**

**15 CAR § 2-501. Conditions for disbursements.**

(a) After an application for assistance has been approved by the Arkansas Natural Resources Commission, the following conditions and requirements shall be met prior to the release and disbursement of any assistance funds:

- (1) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, applicant must submit to the commission all plans, specifications, and engineering reports for the project, all of which shall be complete

and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project;

(2)(A) Applicant, commission, and all other necessary parties shall have executed all instruments and documents, in form and content acceptable to the commission, necessary for closing including, but not limited to, loan documents, ordinances or resolutions, construction contracts, closing certificates, legal opinions, corresponding pledges of project security and revenues where appropriate, and all other relevant documents (herein collectively referred to as "project documents").

(B) Closing procedures and schedule shall conform to the requirements of the commission, including without limitation execution and delivery of the specific project documents with such insertions, corrections, modifications, or amendments as may be approved by the commission in a specific instance;

(3) If not previously provided, applicant shall provide the commission with written and verified statements setting forth:

(A) Information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project; and

(B) A timetable for transfer of funds from the commission to the applicant; and

(4) Applicant shall have complied with all other applicable requirements of this part.

(b) At the time of and upon compliance with the above requirements, the commission may release, advance, and disburse financial assistance funds to the applicant for the approved project.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-502. Disbursement procedures for Water Resources Development General Obligation Bond Program.**

(a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall not be released and disbursed to applicant in a total lump sum but instead shall be disbursed to applicant in partial amounts at agreed-upon intervals and stages of construction, all as provided within the contract documents and the drawdown schedule approved by the Arkansas Natural Resources Commission.

(b) The director may require the applicant to submit to the commission prior to any release or disbursement of funds such:

- (1) Invoices;
- (2) Receipts;
- (3) Contracts;
- (4) Lien waivers;
- (5) Verifications;
- (6) Evidence of expenditures or encumbrances;
- (7) Construction status and progress reports; or
- (8) Other information as the director may require.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-503. Disbursement procedures for Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program.**

(a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the trustee upon loan closing.

(b) The director may require the applicant to submit to the Arkansas Natural Resources Commission prior to any release or disbursement of funds by the trustee such:

- (1) Invoices;

- (2) Receipts;
- (3) Contracts;
- (4) Lien waivers;
- (5) Verifications;
- (6) Requisitions;
- (7) Evidence of expenditures or encumbrances;
- (8) Construction status and progress reports; or
- (9) Other information as the director may require.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-504. Disbursement procedures for Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program.**

(a) Unless otherwise provided and approved by the Director of the Arkansas Natural Resources Commission, the total amount of financial assistance funds authorized for disbursement to the applicant shall be released and disbursed to the trustee upon loan closing.

(b) The director may require the applicant to submit to the Arkansas Natural Resources Commission prior to any release or disbursement of funds by the trustee such:

- (1) Invoices;
- (2) Receipts;
- (3) Contracts;
- (4) Lien waivers;
- (5) Verifications;
- (6) Requisitions;
- (7) Evidence of expenditures or encumbrances;
- (8) Construction status and progress reports; or
- (9) Other information as the director may require.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-505. Increases in financial assistance.**

(a) With respect to approved applications for financial assistance under this part, the Director of the Arkansas Natural Resources Commission shall have the discretionary authority to increase the amount of financial assistance to the applicant for bid overruns without returning to the Arkansas Natural Resources Commission for approval.

(b) Such increase in financial assistance shall be granted only after consultation with the Chair of the Arkansas Natural Resources Commission.

(c) Any financial assistance increases pursuant to this section shall be reported to the commission as a whole at the next regularly scheduled commission meeting.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-506. Deobligation.**

(a) The Director of the Arkansas Natural Resources Commission shall have the discretionary authority to deobligate funds approved by the Arkansas Natural Resources Commission for financial assistance to an applicant without returning to the commission for its approval in the following cases:

(1) Financial assistance was approved by the commission in an amount in excess of that needed for completion of a project;

(2) An applicant requests that funds be deobligated; or

(3) In the judgment of the director, an applicant has failed to comply with the requirements of this part.

(b)(1) Deobligations, if made under subdivision (a)(3) of this section, shall be made only after consultation with and concurrence of the Chair of the Arkansas Natural Resources Commission.

(2) Any deobligations pursuant to this section shall be reported to the commission as a whole at the next regularly scheduled commission meeting.

**Authority.** Arkansas Code § 15-20-206.

## **Subpart 6. Miscellaneous Provisions**

### **15 CAR § 2-601. Inspection of works, technical and financial records.**

By making application to the Arkansas Natural Resources Commission, the applicant will be deemed to consent and agree to the following:

(1) **Facility inspection.** From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, the commission shall have the right to inspect any and all of the projects and all incidental works, areas, facilities, and premises otherwise pertaining thereto;

(2) **Record inspection.** From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, the commission shall at all reasonable times have the right to inspect, review, or copy all contracts, documents, records, or other information related to the application, the project or projects, and the operation of the applicant's system, including financial records possessed by the applicant or its:

- (A) Contractors;
- (B) Agents;
- (C) Employees; or
- (D) Representatives;

(3) **Audits.** From time of application throughout construction and at all times while any assistance from the commission to the applicant is outstanding, the applicant shall, unless otherwise agreed to by the Director of the Arkansas Natural Resources Commission, provide the following:

(A) **Construction audit.** Upon completion of the project, the applicant shall provide an audit by an independent certified public accountant of the expenditure of construction funds, including the financial assistance provided by the commission; and

(B) **Annual audit.** The applicant shall furnish to the commission annually, within one hundred twenty (120) days after close of applicant's fiscal year, audited financial statements prepared by an independent certified public accountant, accompanied by such accountant's report thereon, reflecting:

(i) The financial condition of applicant at the end of such fiscal year;  
(ii) The results of operations and changes in fund balances with respect to applicant;

(iii) Applicant's compliance with the terms and conditions of financial assistance documents and this part; and

(iv) Other management or financial criteria established by the director; and

(4)(A) In addition, all federal and state reviews and/or audits of project funds must be forwarded to the commission as long as the applicant has an outstanding loan.

(B) Applicants receiving grants from the commission must submit an annual audit if requested by the director.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-602. Project modifications.**

(a) After an application for financial assistance has been approved by the Arkansas Natural Resources Commission and after the Director of the Arkansas Natural Resources Commission has reviewed and approved an applicant's plans and specifications for the project, no change, modification, amendments, or departure otherwise to or from the approved plans and specifications that would materially or significantly affect total project cost, estimated revenues, or design shall be made, allowed, or authorized without the prior written approval thereof by the director.

(b) During the period of construction, all material changes of any nature, delays in construction, and changes in contract times must be reported to the commission.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-603. Records public.**

All records of the Arkansas Natural Resources Commission relating to the financial assistance programs contemplated within this part shall be public records available for public inspection by any interested person at reasonable times and in a reasonable manner.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-604. Continuing responsibilities — Repayments and other responsibilities.**

(a) Unless otherwise provided or approved by the Arkansas Natural Resources Commission, or unless reduced or waived in whole or part by the commission for cause, each applicant will be expected to repay and reimburse to the commission over a period not in excess of the expected useful life of the project, and the project agreements will provide for repayment of all amounts of financial assistance provided by the commission, including:

- (1) The commission's cost of funds provided; and
- (2) A proportionate and equitable share of the expense of administration of the applicable commission program.

(b) Each applicant shall comply with the terms and conditions established by the commission or Director of the Arkansas Natural Resources Commission prior to disbursements and during the time period when the financial assistance provided by the commission is outstanding, including without limitation the following:

- (1) Amount of financial assistance;
- (2) Source, type, and form of funding;
- (3) Interest rate;
- (4) Revenues;
- (5) Debt service reserve;
- (6) Depreciation reserve;

- (7) Audits;
- (8) Financial statements;
- (9) Management letters;
- (10) Letters of conditions or notification; and
- (11) Applicable state and federal laws.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-605. Fees for general obligation bond programs.**

**(a) Application fees.**

(1) Upon the Arkansas Natural Resources Commission approving a project's funding from the general obligation bond program funds, the applicant shall be obligated to pay an application fee, as determined by the commission, up to three percent (3%) of the total amount of financial assistance requested under these programs.

(2) The application fee will immediately be due and payable when and if:

(A) The applicant has secured other funding to replace the commission's obligated funds;

(B) The applicant fails to proceed in a timely manner through project completion, after the commission has obligated the project's funds;

(C) The applicant is not in compliance with all of the commission's rules;

or

(D) Directed by the commission in the terms and conditions.

(3) The application fee shall automatically be part of the servicing fees collected at loan closing, unless previously due and payable per subdivision (a)(2) of this section.

(4) The commission may waive the application fee to an applicant that for reasons outside the applicant's control cannot undertake the approved project.

**(b) Servicing fees.**

(1) All applicants for the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, and the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program shall pay a servicing fee at loan closing of up to three percent (3%) of the total amount of the financial assistance provided under these programs for application, issuance, and administrative costs of the programs as determined by the commission.

(2)(A) A loan servicing fee rate may be charged to the borrower's loan repayments.

(B) The servicing fee rate is part of the combined loan rate.

(C) The servicing fee rate and the combined loan rate will be determined by the commission.

(3)(A) These servicing fees will be deposited in the accounts of the commission and applied to defray the cost of the applicable programs.

(B) Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.

**Authority.** Arkansas Code §§ 15-20-206, 15-20-209.

**15 CAR § 2-606. Servicing fees for Arkansas Water Development Fund, Water, Sewer, and Solid Waste Systems Revolving Fund, and Arkansas Water Resources Cost Share Revolving Fund.**

(a) Applicants for financial assistance under the Arkansas Water Development Fund Program, Arkansas Water Resources Cost Share Revolving Fund Program, or the Water, Sewer, and Solid Waste Management Systems Program shall pay to the Arkansas Natural Resources Commission a servicing fee of three percent (3%) of the total amount of financial assistance provided under these programs.

(b) This fee shall be paid at the time the funds are disbursed unless otherwise approved by the Director of the Arkansas Natural Resources Commission.

(c) This fee shall be:

- (1) Deposited into the Arkansas Water Development Fund; and
- (2) Used for the general operation of the commission.

(d) Upon return of any unneeded funds, the servicing fee associated with those funds will not be refunded.

**Authority.** Arkansas Code §§ 15-20-206, 15-20-209.

**15 CAR § 2-607. Sanctions.**

(a) The Arkansas Natural Resources Commission may, upon written recommendation of the Director of the Arkansas Natural Resources Commission, penalize applicants who:

(1) Voluntarily withdraw from either the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, or the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program subsequent to commission review and approval of an application; or

(2) Otherwise fail to demonstrate good faith in dealing with the commission and its staff.

(b) Sanctions may include a prohibition from participation in any commission financial assistance program.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-608. Project completion, inspection, and audit.**

(a) Upon completion of any project for which financial assistance has been provided, the applicant or its engineer shall furnish to the Arkansas Natural Resources Commission written notification of completion.

(b) Upon receipt of such notification, or upon project completion should notification not be furnished as required herein:

- (1) The commission may conduct a final on-site inspection of the project; and

(2) An audit of any and all financial assistance funds furnished to the applicant may be required as contained in 15 CAR § 2-601.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-609. Return of funds to commission.**

(a)(1) Financial assistance funds made available to an applicant by the Arkansas Natural Resources Commission shall be utilized and expended by the applicant solely and exclusively for the payment of authorized and allowable costs and expenses of the project for which assistance was approved.

(2) Any remaining funds shall be promptly returned to the commission upon request.

(b) In the event funds furnished to an applicant by the commission are not utilized and expended by the applicant for the specific project for which such funds were furnished within a reasonable period of time after disbursement to the applicant, or in the event the commission determines, at any time, that funds furnished were utilized and expended for any unauthorized or unallowable purpose, the applicant shall upon demand return or otherwise pay or reimburse to the commission:

(1) Any and all such unused funds; or

(2) Any amounts of funds used and expended for unauthorized or unallowable purposes.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-610. Late payments.**

(a)(1) Loans from the Arkansas Water Development Fund, the Arkansas Water Resources Cost Share Revolving Fund, and the Water, Sewer, and Solid Waste Systems Revolving Fund will be given a seven-day grace period after the date a loan payment is due.

(2) After the expiration of the grace period, interest at a rate of five percent (5%) of the payment due will be charged on the amount due from the due date until the date payment is received.

(b)(1) As provided in all loan and lease-purchase agreements entered into with respect to financial assistance from the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program, the Water Resources Development General Obligation Bond Program, and Waste Disposal and Pollution Abatement Facilities General Obligation Bond Fund Program, there is a seven-day grace period for lease or loan payments due.

(2) After the expiration of the grace period, interest at the rate stated in the project documents will be charged on the amount due from the due date until the date payment is received.

**Authority.** Arkansas Code §§ 15-20-206, 15-20-209.

**15 CAR § 2-611. Conveyance to eligible entity when project costs repaid.**

Upon repayment to the Arkansas Natural Resources Commission of all project costs and/or such other payments, fees, and charges as may be required to be paid to the commission pursuant to the project agreements in full satisfaction of the applicant's obligations, the commission:

(1) Will convey any ownership interest it has in the project or cause such interest to be conveyed to the proper applicant, or if applicable, to a group of applicants as their interests may appear; and

(2) Shall return control over the operation and maintenance of the project to the applicant or applicants, as the case may be.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-612. Debt service reserve fund, when requested.**

(a)(1) A debt service reserve fund, when required to be funded by the Arkansas Natural Resources Commission, will be a restricted account established and maintained by a third-party trustee or the applicant, as approved by the Director of the Arkansas Natural Resources Commission.

(2) This reserve fund is solely for the benefit and protection of the commission and shall not be used or pledged for any other purpose without prior written approval of the director.

(b) The debt service reserve fund:

(1) Will be funded in whole at closing of the financing of the project, unless otherwise approved by the commission; and

(2) May be funded from the amounts financed by the commission as part of the overall project cost.

**Authority.** Arkansas Code § 15-20-206.

### **15 CAR § 2-613. Depreciation reserve fund.**

(a) The depreciation reserve fund will be a restricted account, established and maintained by a third-party trustee or by the applicant, as approved by the Director of the Arkansas Natural Resources Commission.

(b)(1) This reserve fund is for the replacement of the financed project and shall not be used for any other purpose without the written approval of the Arkansas Natural Resources Commission.

(2) It will be accumulated at a rate and amount established by the director.

**Authority.** Arkansas Code § 15-20-206.

## **Subpart 7. Eligible Entities**

### **15 CAR § 2-701. Eligible entities — Generally.**

All of the entities set out in this subpart are collectively referred to in this part as "eligible entities".

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-702. Entities eligible for assistance under the Water Resources Development General Obligation Bond Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Water Resources Development General Obligation Bond Program may be obtained for an eligible project by any duly constituted and existing political subdivision of the state, including but not limited to counties, cities, towns, and municipalities, and by any duly constituted special purpose improvement district, rural development authority, public facilities board, irrigation district, or regional water distribution district, and by any duly qualified and existing public trust or authority, or rural waterworks facilities boards, individually or as agent, representative, or instrumentality of any political subdivision or other eligible entity described above.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-703. Entities eligible for assistance under the Arkansas Water Development Fund Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Arkansas Water Development Fund Program may be obtained for an eligible project by any:

- (1) Duly constituted entity listed in 15 CAR § 2-702 that is engaged as a local sponsor of any water development project that is an integral part of the Arkansas Water Plan; and
- (2) Nonprofit corporation that was in existence before August 1, 1997, with sponsorship of such an entity.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-704. Entities eligible for assistance under the Water, Sewer, and Solid Waste Management Systems Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Water, Sewer, and Solid Waste Management Systems Program may be obtained for an eligible project by:

- (1) Any duly constituted entity listed in 15 CAR § 2-702; and
- (2) Nonprofit corporations that were in existence before August 1, 1997, and that provide water, sewer, or solid waste services to one (1) or more:
  - (A) Cities;
  - (B) Towns; or
  - (C) Counties.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-705. Entities eligible for assistance under the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program may be obtained for an eligible project by any duly constituted entity listed in 15 CAR § 2-702.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-706. Entities eligible for assistance under the Water Resources Cost Share Revolving Fund Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Arkansas Water Resources Cost Share Revolving Fund Program may be obtained for an eligible project by any duly constituted entity listed in 15 CAR § 2-702

that has entered into or is attempting to enter into a cooperative agreement for cost sharing with the federal government to finance a water resource development project.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-707. Entities eligible for assistance under the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program.**

The financial assistance made available under the Arkansas Natural Resources Commission's Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program may be obtained for an eligible project by any duly constituted entity listed in 15 CAR § 2-702.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-708. Combination of eligible entities.**

For purposes of qualifying for and obtaining the financial assistance contemplated herein, any group of eligible entities may combine and join in making application for project assistance, provided each separate entity within the group is an eligible entity with respect to the particular program for which such application is made.

**Authority.** Arkansas Code § 15-20-206.

**Subpart 8. Special Rules Applicable to the Water Resources Development General Obligation Bond Program**

**15 CAR § 2-801. Projects for which assistance may be obtained.**

(a) In keeping with the purposes of the Water Resources Development General Obligation Bond Program described in the introduction, financial assistance may be obtained for any project within the state in whole or part where benefits of the project

may be expected to accrue to the inhabitants and residents of the state, which project qualifies as any undertaking or work to conserve and develop surface or subsurface water resources or to control or develop water treatment facilities of the state for domestic, agricultural, industrial, or other essential purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to:

(1) Underground storage projects and filtration and water treatment plants, including any system necessary to distribute water from storage or filtration plants to points of distribution or from storage to filtration and treatment plants;

(2) Facilities for distributing water therefrom to wholesale or retail purchasers;  
and

(3) Any system necessary to improve, develop, or extend water storage, treatment, or distribution capabilities of any area of the state.

(b) Such qualified projects are additionally understood to include financial assistance to:

(1) Acquire and own the lands required for the project;

(2) Obtain the water supply; and

(3) Construct appropriate treatment facilities.

(c) As more specifically provided in 15 CAR § 2-802, in order for projects to be qualified for participation in the Water Resources Development General Obligation Bond Program, all interests in land, buildings, equipment, and other facilities being financed with state assistance under Arkansas Code § 15-22-601 et seq., must be capable of being conveyed to the state for the duration of the period of financial assistance.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-802. Nature of project ownership.**

(a) Under the Arkansas Water Resources Development Act of 1981, Arkansas Code § 15-22-601 et seq., the Arkansas Natural Resources Commission is required to own all

projects developed pursuant to the Water Resources Development General Obligation Bond Program.

(b) Accordingly, and as more specifically provided in 15 CAR § 2-804, as a condition of obtaining financial assistance in connection with any project:

(1) The applicant will be required to convey to the commission legal title to all interests in land, buildings, improvements, equipment, and other facilities that:

(A) Are financially assisted by the commission's Water Resources Development General Obligation Bond Program; and

(B) Will comprise a project; and

(2) The commission must be the lawful owner of all facilities constituting the project until all project costs and other fees and charges as may be imposed by the commission have been paid or reimbursed to the commission.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-803. Project costs for which assistance funds may be expended.**

(a) Funds made available by the Arkansas Natural Resources Commission to an applicant for an approved project shall be utilized and expended only toward payment and financing of project costs, as approved by the commission.

(b) For purposes of this section, project costs include the following items:

(1) Costs of acquiring the facilities comprising the project;

(2) Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by:

(A) Contractors;

(B) Builders; and

(C) Material suppliers;

(3) Costs of restoration or relocation of property damaged or destroyed in connection with any construction;

(4) Contractors' performance, payment, and completion bond premiums;

- (5) Title insurance premiums;
- (6) Costs of machinery, equipment, and related facilities acquired or purchased for inclusion in the facilities and the cost of shipping, transportation, and installation thereof;
- (7) Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition;
- (8) Insurance premiums in connection with acquisition of the facilities;
- (9) Architectural and engineering fees for services related to the project prior to and during the period of acquisition;
- (10) Payment or reimbursement to the applicant for interim financing and advances and all costs thereof;
- (11) Abstract and title opinion costs;
- (12) Reasonable project legal fees and expenses of counsel for the applicant;
- (13) Costs of fees of other consultants of the applicant;
- (14) Recording fees;
- (15) Costs of publishing and printing proceedings incident to the project and any local hearings or approvals required in connection therewith; and
- (16) Such other reasonable and necessary expenses as may be:
  - (A) Required to complete the project; and
  - (B) Approved by the commission.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-804. Transfer of ownership.**

(a) For an approved application and project, the Arkansas Natural Resources Commission is authorized to advance funds in the form of purchase payments for the project.

(b) Payment requests must be accompanied by appropriate documentation from project applicants satisfying the conditions for disbursements set forth in Subpart 5 of this part.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-805. Assets to be conveyed.**

(a) All assets constituting part of a water resource project financed with Arkansas Natural Resources Commission Water Resources Development General Obligation Bond Program funds must be transferred and assigned to the commission at the time of disbursement of such funds.

(b) In addition, an applicant may be required, in the sole discretion of the commission, to enter into a ground lease with the commission covering any real property owned by the applicant but not conveyed to the commission in relation to which the commission is required to have access or control in order to effect the intents and purposes of Acts 1981, No. 496.

(c) A project may be transferred to the commission in whole or in part from time to time as portions of the project:

- (1) Are completed; and
- (2) Become the subject of requests for disbursement of funds.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-806. Applicant to act as a commission agent.**

(a) At all times during project construction and operation and in the absence of default by a project applicant, the applicant will be required, pursuant to the project documents, to function and act as the contracting and operating agent of the Arkansas Natural Resources Commission.

(b) The commission will:

- (1) Appoint the applicant to serve in such agency capacity during the term of financial assistance; and
- (2) Require the applicant to indemnify and hold the commission, its members, officers, agents, employees, and consultants harmless against loss or damage in

connection with the construction and operation of the project during such term of financial assistance.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-807. Commission control over project.**

(a) During any time that the eligible entity is in default of the terms of any project document, the Arkansas Natural Resources Commission may, if it so chooses, take control of the project, including but not limited to:

- (1) Management and operation of the project;
- (2) Establishment of user rates; or
- (3) Any similar function.

(b) Control will generally be returned to the applicant upon cure of defaults unless such defaults:

- (1) Are repeated; and
- (2) Form a pattern of consistent failure to adhere to project documents.

**Authority.** Arkansas Code §§ 15-20-206, 15-20-206, 15-20-206.

**Subpart 9. Special Rules Applicable to the Water, Waste Disposal, and Pollution Abatement Facilities General Obligation Bond Program**

**Subpart 10. Special Rules Applicable to the Arkansas Water Development Fund Program and the Water, Sewer, and Solid Waste Management Systems Program**

**15 CAR § 2-1001. Forms of assistance.**

(a) The Arkansas Natural Resources Commission, after duly acting upon an application, may decide to participate in a qualifying water development project or water, sewer, or solid waste management systems project in any of the following ways:

**(1) Loans.**

(A)(i) The commission will, for those projects in need of urgent financing, make temporary, short-term or long-term loans at low interest rates.

(ii) Short-term loans may be made pending acquisition of long-term financing by the applicant.

(iii) The applicant will enter into loan documents with the commission setting forth the terms of the loan.

(B)(i) The interest rate for long-term or short-term loans by the commission shall not exceed five percent (5%) per annum.

(ii) If the commission is convinced that an applicant is financially unable to pay any interest, then the commission may approve a loan with no interest charge.

(C) The date that interest will begin to accrue on the unpaid balance of a loan will be set by the commission.

(D) The loan documents will provide the terms and conditions of the loan, including but not limited to, the:

(i) Rate;

(ii) Principal amount of the loan; and

(iii) Dates and amounts of payments;

**(2) Grant-in-aid.**

(A) The commission will, for those projects demonstrating an exceptional benefit to the state so general in nature that any method of payment of project costs by the local people would prove inequitable, make a grant to the eligible entity for the payment of such costs.

(B) Grants may also be approved when the eligible entity cannot, in the commission's judgment, repay a loan; or

**(3) Joint venture (water development fund projects only).**

(A) For any project which would provide exceptional benefits, or when it is determined to be in the best interests of the state, the commission may join with the applicant as a co-owner and sponsor in order to provide for that purpose.

(B) This action may consist of purchases of land or joint ownership of the entire project.

(C) Execution of a joint venture agreement between the applicant and the commission will be required.

(b)(1)(A) Decisions on the type of financial assistance to be conferred by the commission for water or wastewater projects will be based upon the system's rate burden factor (RBF).

(B) The RBF is the cost of four thousand (4,000) gallons per month for one (1) year, assuming proposed rates, expressed as a percentage of annual median household income (MHI) in the applicant's locality.

(2) In addition, consideration will be given to applicants with percentages of low income, elderly, or unemployed residents higher than the average state incidence of such persons.

(3) The example and table set out below indicate the manner in which the above RBF factor criteria will be utilized.

**Example:**

MHI from the most recent census = \$11,000

Cost of 4,000 gallons/month = \$15.00

(cost 4,000 gal/mo. \* 12 mo.)

RBF= ----- \* 100

MHI

(\$15.00 \* 12)

RBF= ----- \* 100

\$11,000

RBF=1.64%

**System’s Rate Burden Factor (RBF) Chart**

<b>RBF</b>	<b>Types of financial assistance</b>
0.0 – 0.49	None.
0.50 - up	Interim financing; 5 % interest; maximum 3 years payback.
1.00 – 1.49	5% interest; 10 year payback.
1.50 – 1.99	5% interest; 20 year payback.
1.50 - up	Grant; must also have two or more of the following: greater than average State incidence of elderly, low income, or unemployed persons.
2.00 – 2.99	5% interest; 10 years deferred interest and principal payment; 20 year payback after 10 year deferral.
2.50 - up	Grant; must also have one or more of the following: greater than average State incidence of elderly, low income, or unemployed persons.
3.00 - up	Grant.

(c)(1) Calculation of the RBF is intended to provide general guidelines and standards for application and review by the commission.

(2) Special consideration may also be given to such factors as:

- (A) Documented health hazards; and
- (B) Unusual economic impacts.

(3) In all instances, each individual application must be reviewed and considered on its own merits.

(4) The standards set forth above shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of the commission's judgment and discretion.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-1002. Last funds used — Return of unneeded funds.**

(a)(1) When funds provided from the Water Development Fund programs or Water, Sewer, and Solid Waste Systems programs are used in conjunction with other funds provided by the Arkansas Natural Resources Commission's other programs except the Water Development Fund program, other state programs, federal programs, or local sources, the Water, Sewer, and Solid Waste Management Systems Program funds shall be the last funds expended.

(2) The Director of the Arkansas Natural Resources Commission may waive this requirement.

(b) Any unneeded funds shall be promptly returned to the commission.

**Authority.** Arkansas Code §§ 15-20-206, 15-20-206, 15-20-206.

**Subpart 11. Special Rules Applicable to the Waste Disposal and Pollution Abatement Facilities General Obligation Bond Program**

**Subpart 12. Special Rules Applicable to the Arkansas Water Resources Cost Share Revolving Fund Program**

**15 CAR § 2-1201. Projects for which assistance may be obtained.**

(a) In keeping with the purposes of the Arkansas Water Resources Cost Share Revolving Fund Program ("cost share program") described in the Introduction, financial assistance may be requested for any project that qualifies as a "water resources development project".

(b) For the purposes of the cost share program, "water resources development project" means the construction, acquisition, ownership, replacement, operation, and maintenance of facilities, including land, easements, and works of improvement, for the protection, conservation, preservation, development, utilization, and proper disposal of the state's water resources and related land resources in order to:

(1) Provide for the people of the state:

(A) Adequate supplies of quality water for municipal, industrial, agricultural, recreational, and domestic purposes;

(B) Water for navigation; and

(C) Access to:

(i) The state's lakes and streams; and

(ii) Parks and other recreational sites along their shores; and

(2) Reclaim, preserve, and protect the state's land resources and adequately protect the wealth of the state from disastrous floods.

**Authority.** Arkansas Code § 15-20-206.

**Codification Notes.** The introduction mentioned in subsection (a) of this section can be found in a codification note at the beginning of this part.

**15 CAR § 2-1202. Forms of assistance.**

(a) The Arkansas Natural Resources Commission is authorized to make either loans or grants to eligible entities with limited financial capacity to provide them with the nonfederal share of the cost for a water resources development project.

(b) The commission may provide financial assistance to an eligible entity in the form of loans or grants for a project without the requirement of a cooperative agreement between the entity and the federal government if the commission determines that:

(1) The project is of such type or size that cost sharing is not efficient or effective; or

(2) Current conditions make the financing of the project through cooperative agreement with the federal government within a reasonable time unlikely.

(c) Loans from the Arkansas Water Resources Cost Share Revolving Fund shall be repaid in full at an interest rate up to the maximum allowed under Arkansas Constitution, Article 19, § 13, as amended by Ark. Const. Amend. 60.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-1203. Maximum participation.**

The Arkansas Natural Resources Commission shall not make a loan or a grant to an eligible entity in an amount greater than fifty percent (50%) of the total water resource development project cost unless there is no requirement for a cooperative agreement, in which case the commission may provide up to sixty-five percent (65%) of the total project cost in the form of a loan or grant.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-1204. Application.**

(a)(1) Each January 1, the Arkansas Natural Resources Commission shall take applications from eligible entities for assistance to be awarded for water resource development projects for the next fiscal year.

(2) The annual deadline for applications shall be March 31 of each year.

(b) The commission shall award grants and loans for water resource development projects, contingent on the availability of funds, by June 30 of each year.

**Authority.** Arkansas Code § 15-20-206.

**15 CAR § 2-1205. Priority ranking for water projects.**

[Reserved.]

**Authority.** Arkansas Code § 15-20-206.